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Practice & Revision Kit

**Corporate and Business Law –
Global (LW – GLO)**

For exams from 1 September 2023
to 31 August 2024



Content reviewed by
ACCA's examining team

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Contents

	Page
Finding questions	
Question index	iv
Helping you with your revision	vi
Revising Corporate and Business Law	
Topics to revise	vii
Passing the LW exam	viii
Computer-based exams	ix
Tackling multiple choice questions	x
Exam information	xi
Useful websites	xi
Questions and answers	
Questions	3
Answers	95
Exam practice	
Mock exam 1	
• Questions	153
• Answers	167
Mock exam 2	
• Questions	177
• Answers	191
Review Form	

Question index

The headings in this checklist/index indicate the main topics of questions. Multiple Task Questions (MTQs) will cover material within the relevant part of the syllabus.

	Marks	Time allocation Mins	Page number	
			Question	Answer
Part A: Essential elements of legal systems				
1 Business, political and legal systems	23	28	3	95
2 International trade, legal regulation and conflict of laws	23	28	5	96
3 Court-based adjudication and alternative dispute resolution mechanisms	23	28	7	98
Part B: International business transactions				
4 Contracts for the international sale of goods	23	28	10	100
5 Obligations and risk in contracts for international sales	23	28	13	101
6 MTQ Bank 1	30	36	16	103
Part C: Transportation and payment of international business transactions				
7 Transportation documents and means of payment	23	28	20	105
8 MTQ Bank 2	30	36	22	107
Part D: Formation and constitution of business organisations				
9 Agency law	23	28	25	108
10 Partnerships	23	28	27	110
11 Corporations and legal personality	23	28	29	112
12 Company formation	23	28	31	113
13 Constitution of a company	23	28	33	115
14 MTQ Bank 3	30	36	36	116
Part E: Capital and the financing of companies				
15 Share capital	23	28	40	118
16 Loan capital	23	28	43	120
17 Capital maintenance and dividend law	23	28	46	122
18 MTQ Bank 4	30	36	49	123

	Marks	Time allocation Mins	Page number	
			Question	Answer
Part F: Management, administration and the regulation of companies				

19 Company directors	23	28	53	125
20 Other company officers	23	28	55	126
21 Company meetings and resolutions	23	28	57	128
22 MTQ Bank 5	30	36	59	129

Part G: Insolvency law

23 Insolvency and administration	23	28	62	131
24 MTQ Bank 6	30	36	64	133

Part H: Corporate fraudulent and criminal behaviour

25 Fraudulent and criminal behaviour	23	28	67	135
26 MTQ Bank 7	30	36	70	136

Mixed Question Banks

27 Mixed Global Law Questions 1	27	33	73	138
28 Mixed Global Law Questions 2	26	32	76	140
29 Mixed Global Law Questions 3	29	35	79	142
30 Mixed Questions 1 (Specimen exam)	23	28	82	144
31 Mixed Questions 2 (Specimen exam)	25	30	84	145
32 Mixed Questions 3 (Specimen exam)	22	27	87	146
33 Mixed Multiple Task Questions 1 (Specimen exam)	30	36	90	148

Mock Exams

Mock Exam 1	100	120	153	167
Mock Exam 2	100	120	177	191

Helping you with your revision

BPP Learning Media – ACCA Approved Content Provider

As an ACCA **Approved Content Provider**, BPP Learning Media gives you the **opportunity** to use revision materials reviewed by the ACCA examining team. By incorporating the ACCA examining team's comments and suggestions regarding the depth and breadth of syllabus coverage, the BPP Learning Media Practice & Revision Kit provides excellent, **ACCA-approved** support for your revision.

These materials are reviewed by the ACCA examining team. The objective of the review is to ensure that the material properly covers the syllabus and study guide outcomes, used by the examining team in setting the exams, in the appropriate breadth and depth. The review does not ensure that every eventuality, combination or application of examinable topics is addressed by the ACCA Approved Content. Nor does the review comprise a detailed technical check of the content as the Approved Content Provider has its own quality assurance processes in place in this respect.

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www.bpp.com/learningmedia/Errata.

Tackling revision and the exam

Using feedback obtained from the ACCA examining team review:

- We look at the dos and don'ts of revising for, and taking, ACCA exams
- We focus on Corporate and Business Law (LW); we discuss revising the syllabus and what to do (and what not to do) in the exam

Selecting questions

We provide signposts to help you plan your revision.

- A full **question index**

Attempting mock exams

There are two mock exams that provide practice at coping with the pressures of the exam day. We strongly recommend that you attempt them under exam conditions because they reflect the question styles and syllabus coverage of the exam.

Revising Corporate and Business Law

Topics to revise

All questions are compulsory so you must revise the **whole** syllabus. Since the exam includes 45 multiple choice questions in Section A, you should expect questions to cover a large part of the syllabus. Selective revision **will limit** the number of questions you can answer and hence reduce your chances of passing. It is better to go into the exam knowing a reasonable amount about most of the syllabus rather than concentrating on a few topics to the exclusion of the rest.

Question practice

Practising as many exam-style questions as possible will be the key to passing this exam. You must do questions under **timed conditions**.

Avoid looking at the answers until you have finished a question bank. Your biggest problem with the multiple task questions (MTQ) may be knowing how to start, and this needs practice.

Also ensure that you attempt both mock exams under exam conditions.

Passing the LW exam

Displaying the right qualities

- You will be required to identify the requirements of multiple choice questions quickly, so that you can make your answers confidently within the available time.
- You will be required to interpret scenarios and apply your knowledge to them.
- You must therefore be able to apply your skills in a practical context.

Avoiding weaknesses

- There is no choice in this exam, all questions have to be answered. You must therefore study the entire syllabus, there are no shortcuts.
- The ability to answer multiple choice questions improves with practice. Try to get as much practice with these questions as you can.
- The multiple task questions (MTQs) will be based on simple scenarios, so be prepared to think carefully and apply the law appropriately.
- Attempt all parts of the MTQs.

Gaining the easy marks

Some MCQs are easier than others and will take less time to process. Answer those that you feel fairly confident about as quickly as you can. Come back later to those you find more difficult. This could be a way of making use of the time in the examination most efficiently and effectively. Many MCQs will not involve calculations. Make sure that you understand the wording of MCQs before selecting your answer.

Computer-based Exams

Computer-based exams (CBEs) are available for the English and Global variants of this exam. They must be taken at an ACCA CBE Licensed Centre.

How does CBE work?

- Questions are displayed on a monitor.
- Candidates enter their answer directly onto the computer.
- Candidates have two hours to complete the examination.
- When the candidate has completed their examination, the final percentage score is calculated and displayed on screen.
- Candidates are provided with a Provisional Result Notification showing their results before leaving the examination room.
- The CBE Licensed Centre uploads the results to the ACCA (as proof of the candidate's performance) within 72 hours.
- Candidates can check their exam status on the ACCA website by logging into myACCA.

Benefits

- **Flexibility** as a CBE can be sat at any time
- **Results** can also be taken at any time and there is no restriction on the number of times a candidate can sit a CBE
- **Instant feedback** as the computer displays the results at the end of the CBE
- Results are notified to ACCA **within 72 hours**

CBE question types

- Multiple choice – choose one answer from three or four options
- Multiple response – select one or more responses by clicking the appropriate tick boxes
- Multiple response matching – select a response to a number of related part questions by choosing one option from a selection

Tackling multiple choice questions

The MCQs in your exam contain three or four possible answers. You have to **choose the option that best answers the question**. The incorrect options are called distracters. There is a skill in answering MCQs quickly and correctly. By practising MCQs you can develop this skill, giving you a better chance of passing the exam.

You may wish to follow the approach outlined below, or you may prefer to adapt it.

Step 1 Skim read all the MCQs and identify what appear to be the easier questions.

Step 2 Attempt each question – **starting with the easier questions** identified in Step 1. Read the question **thoroughly**. You may prefer to work out the answer before looking at the options, or you may prefer to look at the options at the beginning. Adopt the method that **works best for you**.

Step 3 Read the four options and see if one matches your own answer.

Step 4 You may find that none of the options matches your answer.

- Re-read the question to ensure that you understand it and are answering the requirement
- Eliminate any obviously wrong answers
- Consider which of the remaining answers is the most likely to be correct and select the option

Step 5 If you are still unsure make a note and continue to the next question

Step 6 Revisit unanswered questions. When you come back to a question after a break you often find you are able to answer it correctly straight away. If you are still unsure have a guess. You are not penalised for incorrect answers, so **never leave a question unanswered!**

After extensive practice and revision of MCQs, you may find that you recognise a question when you sit the exam. Be aware that the detail and/or requirement may be different. If the question seems familiar read the requirement and options carefully – do not assume that it is identical.

Exam information

Format of the exam

All questions are compulsory.

45 multiple choice questions in Section A, each worth 1 or 2 marks. A total of 70 marks are available.

5 multiple task questions in Section B, each worth 6 marks. A total of 30 marks are available.

Time allowed: 2 hours

Additional information

The study guide provides more detailed guidance on the syllabus and can be found by visiting the exam resource finder on the ACCA website: www.accaglobal.com/gb/en.html

Useful websites

The websites below provide additional sources of information of relevance to your studies of *Corporate and Business Law*.

- www.accaglobal.com
ACCA's website. The students' section of the website is invaluable for detailed information about the qualification, past issues of Student Accountant (including technical articles) and a free downloadable Student Planner App.
- www.bpp.com
Our website provides information about BPP products and services, with a link to the ACCA website.
- www.ft.com
This website provides information about current international business. You can search for information and articles on specific industry groups as well as individual companies.
- www.lawsociety.org.uk
Law Society
- www.bbc.co.uk
The website of the BBC carries general business information as well as programme-related content.

Questions

1 Business, political and legal systems

28 mins

- 1.1 In which of the following types of economic system does the government make all the decisions regarding resource allocation?
- ☐ Planned economy
 - ☐ Mixed economy
 - ☐ Market economy
- (1 mark)**
-
- 1.2 Which of the following statements concerning positive law is correct?
- ☐ Positive law is created by international legal organisations
 - ☐ Positive law is the law that a state imposes on its citizens
 - ☐ Positive law is created by democracies but not dictatorships
- (1 mark)**
-
- 1.3 Which of the following statements describes the cause of conflict of laws?
- ☐ Inconsistencies between a nation's criminal and civil law
 - ☐ Disagreements caused by differences between one nation's laws and another nation's laws
 - ☐ Differences in the operation of a common law legal system and a civil law legal system
- (1 mark)**
-
- 1.4 In the English legal system, what is the standard of proof in a criminal law case?
- ☐ Balance of probability
 - ☐ Beyond reasonable doubt
 - ☐ Reasonable guilt
- (1 mark)**
-
- 1.5 In the English legal system, what is the standard of proof in a civil law case?
- ☐ Beyond reasonable doubt
 - ☐ Beyond all possibility
 - ☐ Balance of probability
- (1 mark)**
-
- 1.6 In the English common law system, which of the following names is given to the rule of statutory interpretation that states that words in a statute should be given their plain, ordinary meaning?
- ☐ Contextual rule
 - ☐ Literal rule
 - ☐ Purposive rule
- (1 mark)**
-
- 1.7 Which of the following describes the role of judges in a civil law legal system?
- ☐ To apply the law only
 - ☐ To draft the law only
 - ☐ To draft and apply the law
- (1 mark)**
-
- 1.8 Which of the following is the key source of Sharia law?
- ☐ Ijtihad
 - ☐ Quran
 - ☐ Madhab
 - ☐ Imam
- (2 marks)**
-
- 1.9 What is the name given in Sharia law to the concept of unlawful gain, which is usually translated as meaning interest?
- ☐ Ijma
 - ☐ Qiyas
 - ☐ Riba
 - ☐ Sunnah
- (2 marks)**
-

1.10 Which **TWO** of the following are mechanisms in the legal system for regulating and enforcing the laws that a country has put in place?

- ☐ The legislature
- ☐ The executive
- ☐ The head of state
- ☐ The judiciary

(2 marks)

1.11 Separation of powers involves a state having different people acting as head of state and head of the executive.

In the UK, what is the name given to the head of the executive?

- ☐ The Monarch
- ☐ The President
- ☐ The Prime Minister
- ☐ The Chancellor of the Exchequer

(2 marks)

1.12 What is the name given to the party in a criminal law case, who is on trial for committing a crime?

- ☐ The accused
- ☐ The defendant
- ☐ The claimant
- ☐ The prosecution

(2 marks)

1.13 Which **TWO** of the following would be seen in a civil system of law as opposed to a criminal system of law?

- ☐ Proof to be on the balance of probabilities
- ☐ Proof to be beyond reasonable doubt
- ☐ A claimant and a defendant
- ☐ An accused and a prosecution

(2 marks)

1.14 In the English common law system, which of the following is a rule that must be met before a precedent can be applied to a particular case?

- ☐ The decision must be based on a question of fact
- ☐ The decision must not be based on a proposition of law
- ☐ The material facts of each case must be the same
- ☐ The decision must form part of the obiter dicta of the case

(2 marks)

1.15 Which of the following is the name given to the type of statutory interpretation in a civil law system where a judge seeks to identify the social purpose of the legislation and apply it in a manner that achieves it?

- ☐ Socio-legal method
- ☐ Historical method
- ☐ Teleological method
- ☐ Common method

(2 marks)

(Total = 23 marks)

2 International trade, legal regulation and conflict of laws

28 mins

2.1 Which of the following types of law consists of rules and principles that apply in general to the relationships of sovereign states and international organisations?

- ☐ Private international law
- ☐ Public international law
- ☐ Common international law

(1 mark)

2.2 UN Model Laws are an example of which of the following types of law?

- ☐ International criminal law
- ☐ Public international law
- ☐ Private international law

(1 mark)

2.3 Which of the following describes conflict of laws?

- ☐ Disagreements between nations concerning differences in human rights legislation
- ☐ Disagreements between business organisations in different nations caused by different national laws
- ☐ Disagreements between nations concerning protectionist trade policies

(1 mark)

2.4 Which of the following types of international law is **NOT** automatically binding on nations?

- ☐ UN Conventions
- ☐ International Treaties
- ☐ UN Model Laws

(1 mark)

2.5 Which of the following is the principle that determines which laws apply to an international contract dispute?

- ☐ Conflict of laws
- ☐ Choice of laws
- ☐ Co-operation of laws

(1 mark)

2.6 Which of the following describes the principle of choice of laws?

- ☐ The principle of choice of laws states that UNCITRAL shall determine which country's law will apply in a particular situation
- ☐ The principle of choice of laws states that where parties to a written contract have expressed a preference for a particular law to apply then that law should govern the contract
- ☐ The principle of choice of laws states that where parties to an international contract are in dispute then the relevant UN Model Law shall determine which particular law applies

(1 mark)

2.7 Which of the following organisations is a major source of international trade law?

- ☐ ICC
- ☐ WTO
- ☐ UNCITRAL

(1 mark)

2.8 Agreements formed by which of the following international organisations are based on the liberalisation of free trade?

- ☐ WTO
- ☐ ICA
- ☐ UNCITRAL
- ☐ UNIDROIT

(2 marks)

2.9 Which of the following international organisations set up the International Court of Arbitration?

- ☐ ICC
- ☐ WTO
- ☐ OECD
- ☐ EU

(2 marks)

2.10 Barriers to free international trade are often a source of dispute between nations.

Which type of barrier to free trade involves a total ban on imports from a particular country?

- ☐ Import quota
- ☐ Embargo
- ☐ Import restrictions
- ☐ Tariff

(2 marks)

2.11 Which type of barrier to free trade involves taxing imported goods?

- ☐ Customs duties
- ☐ Import restrictions
- ☐ Import quotas
- ☐ Embargos

(2 marks)

2.12 Which of the following sources of international law may be adopted by nations into their own national law and are a particular source of rules to help business organisations avoid the problem of conflicts of laws?

- ☐ UN Conventions
- ☐ UN Treaties
- ☐ UN Model Laws
- ☐ UN Resolutions

(2 marks)

2.13 The Dispute Settlement Body operates a procedure for resolving trading disputes between member countries.

Which of the following international organisations is the Dispute Settlement Body a part of?

- ☐ WTO
- ☐ OECD
- ☐ UNIDROIT
- ☐ UNCITRAL

(2 marks)

2.14 Which of the following international organisations has its purpose as being a forum to discuss, develop and refine economic and social policies?

- ☐ UNCITRAL
- ☐ WTO
- ☐ OECD
- ☐ ICC

(2 marks)

2.15 Which of the following international bodies is an intergovernmental organisation whose rules are in the form of international conventions that apply in preference to a state's national law once they have been implemented?

- ☐ UNCITRAL
- ☐ UNIDROIT
- ☐ ICC
- ☐ WTO

(2 marks)

(Total = 23 marks)

3 Court-based adjudication and alternative dispute resolution mechanisms

28 mins

- 3.1 In the English civil law system, the Queen's Bench, Family and Chancery are divisions of which particular court?
- ☐ Court of Appeal
 - ☐ Supreme Court
 - ☐ High Court
- (1 mark)
-
- 3.2 In which court of the English criminal law system do all cases begin?
- ☐ Magistrates' Court
 - ☐ Crown Court
 - ☐ Divisional Court of Queen's Bench
- (1 mark)
-
- 3.3 Which of the following statements concerning the European Court of Justice (ECJ) is correct?
- ☐ The ECJ is part of the legal system of every European Union member state
 - ☐ The ECJ only hears criminal law cases
 - ☐ The ECJ is a sub-body of the United Nations
- (1 mark)
-
- 3.4 Which of the following is **NOT** a valid ground, under the UNCITRAL Model Law on International Commercial Arbitration, on which to apply to a court to have an arbitral award set aside?
- ☐ The award deals with matters that do not fall within the arbitration agreement
 - ☐ The applicant challenges the appointment of one of the arbitrators
 - ☐ The applicant was not given proper notice of the proceedings so could not present their case
- (1 mark)
-
- 3.5 Which of the following statements regarding the validity of arbitration agreements under the UNCITRAL Model Law on International Commercial Arbitration is correct?
- ☐ Arbitration agreements must be filed with the International Court of Arbitration
 - ☐ Arbitration agreements must be in writing
 - ☐ Arbitration agreements must specify the arbitrators that should be appointed
- (1 mark)
-
- 3.6 Which of the following parties will determine the procedure to be used in an international commercial arbitration if the parties in dispute have not agreed a procedure to follow?
- ☐ The International Court of Arbitration
 - ☐ The arbitral tribunal
 - ☐ The relevant court in the country that the arbitration is being heard in
- (1 mark)
-
- 3.7 When an arbitral award is made, which of the following rules of law should the tribunal apply according to the UNCITRAL Model Law on International Commercial Arbitration?
- ☐ The rules of law of the state that the tribunal is being heard in
 - ☐ The rules of law chosen by the parties
 - ☐ The rules of law set out by the International Court of Arbitration
- (1 mark)
-
- 3.8 In which of the following forms does the UNCITRAL Model Law on International Commercial Arbitration state that arbitral awards should be made?
- ☐ Verbal
 - ☐ In writing to the parties
 - ☐ Newspaper announcement
 - ☐ Web page
- (2 marks)
-

3.9 Which of the following is a valid reason to have an arbitral award set aside?

- ☐ A party was not given proper notice of an arbitrator's qualifications
- ☐ The composition of the tribunal was incorrect
- ☐ The award conflicts with a policy of the World Trade Organization
- ☐ The party was not notified of the arbitrator's nationality

(2 marks)

3.10 Which of the following is an advantage of court-based adjudication over alternative dispute resolution?

- ☐ Bringing a case to court is cheaper than alternative methods
- ☐ A decision on the case is made quicker under court-based adjudication than under alternative methods
- ☐ In court-based adjudication, each party's case is put forward by a legally qualified advocate
- ☐ The waiting period before the case is heard is quicker under court-based adjudication

(2 marks)

3.11 Which of the following international organisations developed the principle that where a written arbitration agreement is in place, then a dispute should not be heard in court?

- ☐ ICA
- ☐ ECJ
- ☐ WTO
- ☐ UNIDROIT

(2 marks)

3.12 In relation to statements of claim and defence in an arbitration conducted under the rules of the UNCITRAL Model Law on International Commercial Arbitration, which **TWO** of the following statements are correct?

- ☐ The defendant must state their defence in relation to the facts only
- ☐ If the claimant fails to provide a statement of claim within the time period specified by the tribunal, arbitration proceedings are terminated
- ☐ If the defendant fails to provide a statement of defence within the time period specified by the tribunal, arbitration proceedings are terminated
- ☐ If the defendant fails to provide a statement of defence within the time period specified by the tribunal, arbitration proceedings may still continue

(2 marks)

3.13 Where a written arbitration agreement does not specify the number of arbitrators that should sit on an arbitral tribunal, the UNCITRAL Model Law on International Commercial Arbitration states that a certain number of arbitrators should be appointed.

Under the Model Law, how many arbitrators should be appointed?

- ☐ One
- ☐ Two
- ☐ Three
- ☐ Five

(2 marks)

3.14 Under the UNCITRAL Model Law on International Commercial Arbitration, where an arbitral tribunal is to have three arbitrators, one arbitrator shall be appointed by each of the two parties in dispute.

Which of the following appoints the third arbitrator?

- ☐ The two appointed arbitrators
- ☐ The International Court of Commercial Arbitration
- ☐ A court in the country that the dispute is to be heard in
- ☐ The party that is the defendant in the case

(2 marks)

3.15 Under the UNCITRAL Model Law on Commercial Arbitration, the appointment of an arbitrator can be challenged if they do not possess three qualities.

Which of the following is **NOT** one of the three qualities that an arbitrator must possess?

- ☐ Be independent
- ☐ Be suitably qualified
- ☐ Be of an appropriate nationality
- ☐ Be impartial

(2 marks)

(Total = 23 marks)

4 Contracts for the international sale of goods

28 mins

4.1 Which of the following contracts does the UN Convention on Contracts for the International Sale of Goods apply to?

- ☐ Contracts for goods bought at auction
- ☐ Contracts for commodities used in the production of clothing
- ☐ Contracts for the sale of shares

(1 mark)

4.2 Which of the following contracts does the UN Convention on Contracts for the International Sale of Goods apply to?

- ☐ Between Company A and Company B which are of the same nationality but have their places of business in different states
- ☐ Between Company A and Company B which have different nationalities but have their places of business in the same state
- ☐ Between Company A and Company B which are of the same nationality and have their places of business in the same state

(1 mark)

4.3 Which of the following statements concerning the sphere of application of the UN Convention on Contracts for the International Sale of Goods is correct?

- ☐ For the Convention to apply to a state, the state must ratify the Convention in full
- ☐ States may declare that certain parts of the Convention do not apply to it and declare that the Convention does not apply to contracts between itself and particular other states
- ☐ States may declare that certain parts of the Convention do not apply to it but must agree that the Convention applies to contracts between itself and all other states

(1 mark)

4.4 Under the UN Convention on Contracts for the International Sale of Goods, at which point does an offer made by post become effective?

- ☐ When it is written
- ☐ When it is posted
- ☐ When it is delivered to the offeree

(1 mark)

4.5 Under the UN Convention on Contracts for the International Sale of Goods, at which point does an acceptance made by post become effective?

- ☐ When it is written
- ☐ When it is posted
- ☐ When it is delivered to the offeror

(1 mark)

4.6 Under the UN Convention on Contracts for the International Sale of Goods, when should an offer made orally be accepted?

- ☐ Immediately it is received by the offeree
- ☐ Within a reasonable time period
- ☐ At any time after the offer was made

(1 mark)

4.7 According to the UN Convention on Contracts for the International Sale of Goods, what is the latest point in time that an offer may be withdrawn?

- ☐ At the same time the offer reaches the offeree
- ☐ At any time before the offer reaches the offeree
- ☐ At any time after the offer has been received by the offeree, but before any acceptance reaches the offeror

(1 mark)

4.8 Under which of the following ICC Incoterms does the seller have the minimum obligations with respect to delivery?

- ☐ FCA
- ☐ CPT
- ☐ EXW
- ☐ DDP

(2 marks)

4.9 Which **TWO** of the following do **NOT** constitute acceptance of an offer under the UN Convention on Contracts for the International Sale of Goods?

- ☐ Silence
- ☐ Despatch of goods
- ☐ Payment for the goods
- ☐ Inactivity

(2 marks)

4.10 Under the UN Convention on Contracts for the International Sale of Goods, at which point is a contract formed?

- ☐ When an offer has been made
- ☐ When an offer has been made and validly accepted
- ☐ When the offeror has performed their obligations under a validly accepted offer
- ☐ When the offeror and offeree have both performed their obligations under a validly accepted offer

(2 marks)

4.11 Which of the following replies to an offer made under the UN Convention on Contracts for the International Sale of Goods would **NOT** be classified as a counter-offer?

- ☐ A reply that seeks to change the place of delivery
- ☐ A reply that seeks to change the quantity of the goods supplied
- ☐ A reply that seeks to change the price of the goods from an out-of-date price to an up-to-date price
- ☐ A reply that seeks to change how disputes under the contract are to be settled

(2 marks)

4.12 Which of the following ICC Incoterms places the most obligations on the seller?

- ☐ CIF
- ☐ DDP
- ☐ DAT
- ☐ CFR

(2 marks)

4.13 Grando, whose place of business is in France, has entered into a number of agreements.

Which **TWO** of these fall within the scope of the UN Convention on Contracts for the International Sale of Goods?

- ☐ A contract to manufacture soap for a customer in Finland
- ☐ A contract to supply skilled French chefs to a hotel in Switzerland
- ☐ A contract to manufacture leather handbags for a customer in Denmark who provides the leather
- ☐ A contract to supply bread every day to a customer in Spain

(2 marks)

- 4.14 Esme makes an offer under the UN Convention on Contracts for the International Sale of Goods to Mildred with the stipulation that acceptance should occur on 31 March at 12 noon. On 25 March, while Mildred is considering the offer, Esme tells her that it is no longer open to her.

Which of the following is an accurate statement of the situation at this point?

- ☐ Esme has made an effective withdrawal of the offer
 - ☐ Esme has made an effective revocation of the offer
 - ☐ Mildred may still accept the offer on 31 March as it was irrevocable
 - ☐ Mildred may still accept the offer on 31 March but Esme may reject her acceptance **(2 marks)**
-

- 4.15 The ICC Incoterm CIF states that the seller must bear the cost of insuring the goods to the named port in the country of import.

What is the minimum value that such insurance should cover?

- ☐ 50% of the contract value
 - ☐ 75% of the contract value
 - ☐ 100% of the contract value
 - ☐ 110% of the contract value **(2 marks)**
-

(Total = 23 marks)

5 Obligations and risk in contracts for international sales

28 mins

- 5.1 If a contract that involves carriage of the goods, formed under the UN Convention on Contracts for the International Sale of Goods, does not specify a place where the goods are to be delivered, at which point does the seller discharge their obligations with respect to delivery?
- ☐ When the goods are delivered to the buyer's place of business
 - ☐ When the goods are handed to the first carrier for transmission to the buyer
 - ☐ When the goods enter the country of import
- (1 mark)**
-
- 5.2 If a contract formed under the UN Convention on Contracts for the International Sale of Goods does not specify a time period for delivery, when should delivery take place?
- ☐ As soon as is possible after the contract is formed
 - ☐ Within a reasonable time after the contract is formed
 - ☐ Within 30 days of the formation of the contract
- (1 mark)**
-
- 5.3 Which of the following correctly states the conformity requirements for goods sold under the UN Convention on Contracts for the International Sale of Goods?
- ☐ Fit for any purpose the buyer may put them to
 - ☐ Fit for the purpose that goods of the same description would ordinarily be used
 - ☐ Fit for the purpose that the goods could reasonably be put to
- (1 mark)**
-
- 5.4 Which of the following correctly states the obligation of the buyer with regard to delivery of the goods under the UN Convention on Contracts for the International Sale of Goods?
- ☐ To be available to take delivery when it is attempted
 - ☐ To do all reasonably expected acts in order to enable the seller to make delivery
 - ☐ To take all necessary measures to minimise the cost of delivery to the seller
- (1 mark)**
-
- 5.5 In which of the following circumstances may a seller declare a contract with a buyer avoided under the UN Convention on Contracts for the International Sale of Goods?
- ☐ Where the buyer has not paid and the seller has granted extra time to pay
 - ☐ Where the buyer is late in their performance to accept and pay for the goods
 - ☐ Where the buyer has refused to accept and pay for the goods
- (1 mark)**
-
- 5.6 Which of the following correctly describes anticipatory breach of contract under the UN Convention on Contracts for the International Sale of Goods?
- ☐ A declaration by the buyer before delivery is made that they will not accept or pay for the goods
 - ☐ A declaration by the buyer at the time delivery is made that they will not accept or pay for the goods
 - ☐ A declaration by the seller at the time delivery is due that due to unforeseen circumstances they will not deliver the goods
- (1 mark)**
-
- 5.7 Under the UN Convention on Contracts for the International Sale of Goods, where a buyer is late in paying for the goods, which of the following remedies is the seller entitled to?
- ☐ Interest only
 - ☐ Damages only
 - ☐ Interest and damages
- (1 mark)**
-

- 5.8 Where a contract has been avoided under the UN Convention on Contracts for the International Sale of Goods, which of the following statements is correct?
- ☐ Neither party may claim damages
 - ☐ Any party that has partly performed their obligations has the right to restitution
 - ☐ Any rights the parties have regarding the settlement of disputes are lost
 - ☐ The contract must be rectified
- (2 marks)
-

- 5.9 Under the UN Convention on Contracts for the International Sale of Goods, where a contract includes carriage but does not state where risk passes, at which point does the risk to the goods pass from seller to buyer?
- ☐ When the goods are passed to the first carrier for delivery to the buyer
 - ☐ When the goods enter the buyer's country of import
 - ☐ When the buyer receives the goods
 - ☐ When the goods leave the seller's country of export
- (2 marks)
-

- 5.10 Which **TWO** of the following are correct rules under the UN Convention on Contracts for the International Sale of Goods?
- ☐ The buyer must confirm in writing that they have taken delivery of the goods
 - ☐ The seller must hand over any documents relating to the goods being delivered
 - ☐ The buyer must confirm receipt of any documents relating to the goods being delivered
 - ☐ The seller must transfer property in the goods
- (2 marks)
-

- 5.11 Which of the following remedies is **ALWAYS** available to the buyer in a contract under the UN Convention on Contracts for the International Sale of Goods when the seller is in breach of contract?
- ☐ Require performance
 - ☐ Declare the contract avoided
 - ☐ Payment of damages
 - ☐ Reduce the price due to lack of conformity of the goods
- (2 marks)
-

- 5.12 In a contract under the UN Convention on Contracts for the International Sale of Goods, where the place of payment is not specified in the contract, where should payment be made?
- ☐ At the seller's place of business
 - ☐ At the buyer's place of business
 - ☐ At the place of export in the seller's country
 - ☐ At the place of import in the buyer's country
- (2 marks)
-

- 5.13 Gur is in breach of his contract to buy a consignment of goods from Yac. The goods cost Yac \$1,000 to make and the selling price to Gur was \$2,000. Yac had an offer to sell the goods to Hef instead for \$1,500 but decided to refuse the opportunity.

What is the value of damages that Yac will be entitled to under the UN Convention on Contracts for the International Sale of Goods?

- ☐ \$500
 - ☐ \$1,000
 - ☐ \$1,500
 - ☐ \$2,000
- (2 marks)
-

- 5.14 Shipping documents are handed over to a buyer on 15 October, even though the date stipulated in the contract for their handover was 31 October. On 26 October the seller realises the documents do not exactly conform to the contract's requirements.

In this case, which of the following statements are true or false?

	True	False
The seller may rectify the documents before 31 October provided this does not cause the buyer unreasonable expense.	<input type="radio"/>	<input type="radio"/>
The seller may rectify the documents within a reasonable time provided this does not cause the buyer unreasonable expense.	<input type="radio"/>	<input type="radio"/>
(2 marks)		

-
- 5.15 Jac took delivery of a consignment of fresh fruit from Kel. He intended to reject the goods for lack of conformity but Kel could not collect the fruit for a week, by which time the fruit would have perished. The value of the fruit under the contract was \$2,000 and Jac decided to sell the fruit rather than let them perish. The fruit was sold for \$1,500 and Jac incurred \$300 selling expenses.

In these circumstances, which of the following statements is correct?

- ☐ Jac must pay Kel \$2,000 for the fruit; he cannot claim back any selling expenses
 - ☐ Jac must pay Kel \$1,500 for the fruit less \$300 selling expenses
 - ☐ Jac must pay Kel \$2,000 for the fruit less \$300 selling expenses
 - ☐ Jac must pay Kel \$1,500 for the fruit; he cannot claim back any selling expenses
- (2 marks)**

(Total = 23 marks)

6 MTQ Bank 1

36 mins

- 6.1 Ax, a manufacturer from Yellowland, contacted Bo, a manufacturer from Redland, to enquire about Bo making special screws of a particularly high quality. Bo provided by return a list of prices and delivery periods.

Ax then ordered 3,000 screws and also 3,000 specialised nuts and bolts, not mentioned before. Bo requested payment in advance or a letter of credit.

Ax then asked for a pro-forma invoice. When Bo sent the invoice it listed screws of a lower quality than the original specification with their respective prices. Ax objected immediately and demanded delivery of the articles in the 'ordered' quality. Bo agreed to delivery of higher quality articles but requested a higher price than on the invoice.

You should assume that the UN Convention on Contracts for the International Sale of Goods applies.

- (a) Which of the following describes how Bo's reply to Ax's initial enquiry, that contained prices and delivery periods, will be treated under the Convention?
- ☐ Offer
 - ☐ Supply of information
 - ☐ Invitation to treat
 - ☐ Acceptance
- (2 marks)**
- (b) Which of the following describes how Bo's request for payment in advance or by letter of credit, will be treated under the Convention?
- ☐ Counter-offer
 - ☐ Supply of information
 - ☐ Invitation to treat
 - ☐ Acceptance
- (2 marks)**
- (c) Which of the following statements is correct?
- ☐ No contract was ever created between Ax and Bo
 - ☐ An offer is still available that Bo is free to accept
 - ☐ An offer is still available that Ax is free to accept
 - ☐ A valid contract exists between Ax and Bo
- (2 marks)**

(Total = 6 marks)

-
- 6.2 Axel, a furniture manufacturer from Exland, ordered 2,000 metres of a particularly high-quality coloured cloth from Beni, a cloth manufacturer from Loland. 1,000 metres of the cloth was to be red and the other 1,000 metres green. When the cloth was delivered Axel found that the green cloth had been replaced by blue cloth.

In spite of the change in the colour Axel used all the cloth without informing Beni and managed to sell all the furniture covered with it at its usual price. However, he refused to pay Beni the full contractual price for the blue cloth as it was not what he had ordered.

You should assume that the UN Convention on Contracts for the International Sale of Goods applies.

- (a) Which of the following statements regarding lack of conformity of the goods is incorrect?
- ☐ The seller must deliver goods which are of the quantity required by the contract
 - ☐ The seller must deliver goods which are of the description required by the contract
 - ☐ The seller must deliver goods which are packaged in the manner required by the contract.
 - ☐ The seller must deliver goods which are fit for the purpose that the buyer wishes to put them to
- (2 marks)**

- (b) Identify whether the following statements concerning Axel are true or false.

	True	False
Axel did not meet his obligations in respect of examining the goods	<input type="radio"/>	<input type="radio"/>
Axel did not meet his obligations in respect of notifying Beni for the lack of conformity of the cloth	<input type="radio"/>	<input type="radio"/>
Axel would not be awarded damages from Beni for the lack of conformity	<input type="radio"/>	<input type="radio"/>
Axel has a liability to pay Beni the full contractual price for the cloth	<input type="radio"/>	<input type="radio"/>

(4 marks)

(Total = 6 marks)

- 6.3 Jean, a manufacturer from Rodland, has entered into a contract with Paul, a wholesaler from Culand, to supply him with three machines. Several weeks after Jean began constructing the machines, Paul changed his mind about the design specification and has notified Jean of his intention not to pay for the machines.

You should assume that the UN Convention on Contracts for the International Sale of Goods applies.

- (a) Which of the follow is **NOT** a right a buyer has where the seller breaches the terms of a contract?
- ☐ The right to require the buyer to make payment if they fail to pay for the goods
 - ☐ The right to give the buyer an extra day to perform their obligations if they fail to perform their obligations
 - ☐ The right to require the buyer to perform their contractual obligations if they fail to perform their obligations
 - ☐ The right to require the buyer to take delivery of the goods if they fail to take delivery

(2 marks)

- (b) Identify whether the following statements concerning Jean and Paul are correct or incorrect.

	Correct	Incorrect
Paul has committed anticipatory breach of contract	<input type="radio"/>	<input type="radio"/>
Paul has committed a fundamental breach of contract	<input type="radio"/>	<input type="radio"/>
Jean may declare the contract with Paul avoided	<input type="radio"/>	<input type="radio"/>
Jean has a duty to mitigate any losses that he may incur	<input type="radio"/>	<input type="radio"/>

(4 marks)

(Total = 6 marks)

- 6.4 Aldo is a manufacturer of specialist bottles with his factory in Wryland. Bod is an olive grower in Xeeland. Aldo entered into a contract with Bod to supply him with 10,000 bottles for his upcoming olive pressing. The bottles were specially made and packed by Aldo and were sold 'ex-works'.

Bod arranged for a carrier to deliver the bottles to his warehouse in Xeeland. When the bottles arrived with Bod it was immediately apparent that they could not be used. They had been inadequately packed and many of them had been broken and the others had become contaminated during transport and so could not be used as olive oil bottles.

Bod immediately contacted Aldo to inform him that he would not pay for the bottles and that he would be getting replacements from a local supplier, although at a higher price. Aldo replied that he was not responsible for the damage, as it had occurred during the transportation of the bottles and he insists on full payment from Bod.

You should assume that the UN Convention on Contracts for the International Sale of Goods applies.

- (a) The bottles were sold 'ex-works', an ICC Incoterm, what does 'ex-works' mean?
- ☐ The buyer collects the goods from the supplier's place of business
 - ☐ The seller pays for the transport costs for the goods
 - ☐ Import and export duties are included in the cost of the goods
 - ☐ The goods are made by the seller rather than a third party
- (2 marks)**
- (b) Where did risk to the goods transfer from Aldo to Bod?
- ☐ When the carrier collected the goods from Aldo
 - ☐ When the goods were cleared for export from Wryland
 - ☐ When the goods entered Xeeland
 - ☐ When the goods were delivered to Bod
- (2 marks)**
- (c) Does Bod have a valid case to claim damages from Aldo?
- ☐ Yes, if it is proved that the packaging did not conform to the requirements of the convention
 - ☐ Yes, under the convention, the goods must be delivered in reasonable condition
 - ☐ No, under the convention, Aldo has no liability for the goods once they are collected from his place of business
 - ☐ No, because the bottles are not suitable for the purpose that Bod wishes to use them for
- (2 marks)**

(Total = 6 marks)

- 6.5 Ali manufactures and supplies cloth from his factory in Arasia. In January he entered into a contract with Ben and Con, two clothes makers in Beloria, to supply them each with 1,000 metres of cloth. Ben's order was for a very high-quality cloth that had to be specially made. Con's order was for Ali's ordinary cloth that was produced on a mass basis. It was to be supplied by Ali's agent from a larger run of 5,000 metres of the cloth that was being delivered to the agent in Beloria. As both orders were due on the same date Ali shipped them together in the same ship container. Unfortunately the ship ran into a severe storm and the container with the cloth inside was washed overboard and lost.

Neither of the contracts made any specific provision as to the passage of risk and it can be assumed that the UN Convention on Contracts for the International Sale of Goods applies.

- (a) Which of the following statements concerning passing of risk and preservation of goods is correct?

- ☐ The rules on passage of risk indicate whether it is the buyer or seller who should insure the goods being transported
- ☐ The buyer is always responsible for arranging shipping insurance because they have an obligation to pay the seller even if the goods are lost or damaged in transport
- ☐ The seller is always responsible for arranging shipping insurance because they have an obligation to supply the goods, even if they are lost or damaged in transport
- ☐ Both the buyer and seller are responsible for insuring the goods whilst they are being transported

(2 marks)

- (b) In respect to the contract between Ali and Ben, which party is liable for the lost cloth?

- ☐ Ali
- ☐ Ben

(2 marks)

- (c) In respect to the contract between Ali and Con, which party is liable for the lost cloth?

- ☐ Ali
- ☐ Con

(2 marks)

(Total = 6 marks)

(Total = 30 marks)

7 Transportation documents and means of payment

28 mins

7.1 Which of the following parties would issue a bill of lading?

- ☐ Seller
- ☐ Carrier
- ☐ Shipper

(1 mark)

7.2 Which of the following is a type of bill of lading?

- ☐ Negotiable bill of lading
- ☐ Endorsed bill of lading
- ☐ Revolving bill of lading

(1 mark)

7.3 Which of the following statements is correct regarding the UNCITRAL Model Law on International Credit Transfers?

- ☐ The sender and the beneficiary must be different parties
- ☐ The sender and the sender's bank are known as the originator
- ☐ The sending and receiving bank are different branches of the same banking organisation

(1 mark)

7.4 Which of the following statements is correct regarding the UNCITRAL Model Law on International Credit Transfers?

- ☐ The Model Law only applies to transfers that are electronic in nature
- ☐ The Model Law also applies to debit transfers
- ☐ The Model Law also applies to credit transfers made by entities that are not banks

(1 mark)

7.5 Under the UNCITRAL Model Law on International Credit Transfers, which of the following is an obligation of the sender?

- ☐ To pay the receiving bank for the payment order when the receiving bank accepts it
- ☐ To ensure funds are available for the sending bank to make payment to the receiving bank
- ☐ To agree with the beneficiary the date that the credit transfer is to take place

(1 mark)

7.6 Under the UN Convention on International Bills of Exchange and International Promissory Notes, what is the name of the process whereby a bill of exchange may be presented for payment by a different party than the one originally intended?

- ☐ Transfer
- ☐ Endorsement
- ☐ Negotiation

(1 mark)

7.7 Under the UN Convention on International Bills of Exchange and International Promissory Notes, when should a bill of exchange that is not payable on demand be presented for payment?

- ☐ On the maturity date only
- ☐ On the maturity date or one or two business days after only
- ☐ Within 30 days of the maturity date

(1 mark)

7.8 Which of the following instruments used in international business transactions is most appropriate to use where there is a high level of risk to the seller that they will not be paid by the buyer?

- ☐ Letter of comfort
- ☐ Bank transfer
- ☐ Letter of credit
- ☐ Bill of exchange

(2 marks)

7.9 Which of the following statements relate to letters of credit or letters of comfort?

	Letters of credit	Letters of comfort
This letter is issued by a bank	<input type="radio"/>	<input type="radio"/>
This letter is issued by a parent company	<input type="radio"/>	<input type="radio"/>

(2 marks)

7.10 In relation to the functions of a bill of lading, which of the following statements are true or false?

	True	False
A bill of lading forms the contract of carriage	<input type="radio"/>	<input type="radio"/>
A bill of lading can be a document of title to the goods	<input type="radio"/>	<input type="radio"/>

(2 marks)

7.11 In a credit transfer made under the UNCITRAL Model Law on International Credit Transfers, if there is a delay at any stage, which of the following is true?

- ☐ The transfer is cancelled and must commence again
- ☐ The bank causing the delay is liable to pay interest only
- ☐ The transfer must continue at the earliest possible time and no bank is held liable
- ☐ The bank causing the delay is liable to pay interest and damages

(2 marks)

7.12 Under the UN Convention on International Bills of Exchange and International Promissory Notes, what is the purchaser known as?

- ☐ Drawee
- ☐ Drawer
- ☐ Payee
- ☐ Acceptor

(2 marks)

7.13 Under the UN Convention on International Bills of Exchange and International Promissory Notes, what is the person who receives the payment known as?

- ☐ Drawer
- ☐ Drawee
- ☐ Payee
- ☐ Acceptor

(2 marks)

7.14 Under the UN Convention on International Bills of Exchange and International Promissory Notes, a party may agree to take responsibility for ensuring a bill of exchange is paid.

What is the name given to such a party?

- ☐ Acceptor
- ☐ Payee
- ☐ Guarantor
- ☐ Drawee

(2 marks)

7.15 Which type of letter of credit is used where there is a course of dealings between buyer and seller and a line of credit is required to be open at all times?

- ☐ Revocable
- ☐ Transferable
- ☐ Back-to-back
- ☐ Revolving

(2 marks)

(Total = 23 marks)

8 MTQ Bank 2

36 mins

- 8.1 Vlad is a food wholesaler based in Vulunia who has a contract to supply a consignment of tinned fruit to Narl in Belusia. Vlad has arranged for Jul to act as carrier to transport the goods to Narl. The consignment will be transported between the countries by road only. As he is quite new to international trade, Vlad is unsure regarding the purpose and operation of transportation documentation, but understands that a bill of lading will be involved at some point.

- (a) Which type of bill of lading will be used in Vlad's contract with Narl?

- ☐ Ocean
- ☐ Through
- ☐ Inland
- ☐ Airway

(2 marks)

- (b) Identify whether the following statements concerning Vlad's bill of lading are true or false.

True False

The bill of lading will be issued by Narl

☐ ☐

The bill of lading will indicate at which point risk passes from Vlad to Narl

☐ ☐

The bill of lading will provide evidence of, or contain the contract of carriage

☐ ☐

The bill of lading will be a document of title concerning the goods being shipped

☐ ☐

(4 marks)

(Total = 6 marks)

- 8.2 Canute Co owns a retail shop in Saxonia and recently contracted to buy a consignment of electrical goods from Ethel Co in Anglovia. Payment was arranged by International Bill of Exchange and the UN Convention on International Bills of Exchange and International Promissory Notes applies.

The payment process involved Canute Co instructing its bank, Redbank, to transfer the funds to Ethel Co's Bank, Bluebank who would then make the funds available to Ethel Co. Bluebank also agreed to guarantee the payment to Ethel Co.

- (a) Match the party to their role under the UN Convention on International Bills of Exchange and International Promissory Notes.

	Drawer	Drawee	Payee	Guarantor
Canute Co	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ethel Co	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Redbank	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Bluebank	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

(4 marks)

- (b) Ethel Co understands that it may transfer the right to receive payment on the bill of exchange to a third party.

What is the name given to this process?

- ☐ Endorsement
- ☐ Transfer
- ☐ Dishonour
- ☐ Presentation

(2 marks)

(Total = 6 marks)

- 8.3 Picard Co, based in Clingland, ordered a batch of cloth from Scott Co, a manufacturer in Vulcland. Payment for the cloth was to be made by bank transfer as follows.

Picard Co would instruct its bank in Clingland (L-bank) to transfer funds to M-bank based in Vulcland. M-bank would then handle the transfer to Scott Co's bank (N-bank). N-bank would then make the funds available to Scott Co. O-bank has agreed to guarantee the payment should there be any problems.

During the transfer M-bank delayed the transfer to N-bank by two business days and Scott Co is seeking compensation.

You should assume that the UNCITRAL Model Law on International Credit Transfer applies.

- (a) Which **TWO** parties will be defined as the 'originator'.

- ☐ Picard Co
- ☐ M-Bank
- ☐ L-Bank
- ☐ Scott Co

(2 marks)

- (b) Which party is the receiving bank?

- ☐ L-bank
- ☐ M-bank
- ☐ N-bank
- ☐ O-bank

(2 marks)

- (c) Is Scott Co entitled to compensation?

- ☐ No – because the delay was caused by M-bank which is not Scott Co's or Picard Co's own bank
- ☐ No – because the delay was less than five business days
- ☐ Yes – Scott Co is entitled to two days' loss of interest
- ☐ Yes – Scott Co is entitled to damages equal to the loss of five days' loss of interest (2 marks)

(Total = 6 marks)

- 8.4 Gip Co is a clothes supplier based in Intalia and recently contracted with a new customer, Ingot Co based in Vinland. Gip Co was keen to avoid any potential losses from dealing with a new customer and sought assurances that Ingot Co would pay its liability on the contract before agreeing to supply it.

Niblic Co, the parent company of Ingot Co, wrote a letter to Gip Co confirming that it was aware of the situation and that it approves of the liability that Ingot Co will incur as a result of the transaction.

Gip Co supplied goods to Ingot Co, but subsequently Ingot Co became insolvent and failed to pay for them. Gip Co is seeking to recover payment from Niblic Co.

- (a) Which type of letter did Niblic Co send to Gip Co?
- ☐ Letter of comfort
 - ☐ Letter of acceptance
 - ☐ Letter of debt
 - ☐ Letter of confirmation
- (2 marks)
- (b) Will Gip Co be successful in recovering its debt from Niblic Co?
- ☐ No, Niblic Co did not accept responsibility for Ingot Co's debt
 - ☐ No, because Ingot Co is insolvent
 - ☐ Yes, Niblic Co accepted responsibility for Ingot Co's debt
 - ☐ Yes, regardless of the letter, a parent company is responsible for the debts of its subsidiaries
- (2 marks)
- (c) Which of the following payment methods should Gip Co have insisted Ingot Co used to pay for the goods to ensure that it would have received payment?
- ☐ Letter of credit
 - ☐ Bank transfer
 - ☐ Cash in the post
 - ☐ Bill of exchange
- (2 marks)

(Total = 6 marks)

-
- 8.5 Max is a manufacturer of machinery in Tomrovia who has entered into a contract to sell machinery to Nisar in Kestria. As the two parties have not dealt with each other previously, Max requires the contract to be financed by an international letter of credit. Nisar's bank is Old Bank whilst Max's bank is Pin Bank.

- (a) Which **TWO** statements concerning letters of credit are correct?
- ☐ Letters of credit eliminate the risk to the seller of not being paid
 - ☐ Letters of credit entitle the seller to payment in full
 - ☐ Letters of credit entitle the seller to immediate payment
 - ☐ Letters of credit benefit the buyer as well as the seller
- (2 marks)

- (b) Identify which of the following statements concerning the letter of credit process between Max and Nisar are true and false.

	True	False
Max requests Old Bank to issue a letter of credit on behalf of Nisar	<input type="radio"/>	<input type="radio"/>
Max can ship the goods when Pin Bank agrees to handle the credit on terms arranged with Old Bank	<input type="radio"/>	<input type="radio"/>
Max receives payment before the funds leave Nisar's bank account	<input type="radio"/>	<input type="radio"/>
Nisar will receive the goods after the funds have left his bank account	<input type="radio"/>	<input type="radio"/>

(4 marks)

(Total = 6 marks)

(Total = 30 marks)

9 Agency law

28 mins

- 9.1 The purpose of an agency relationship is to form a business contract between which of the following parties?
- ☐ Agent and principal
 - ☐ Agent and third party
 - ☐ Principal and third party
- (1 mark)
-
- 9.2 In order to form an agency relationship by express agreement, what form should the agreement take?
- ☐ Oral agreement only
 - ☐ Written agreement only
 - ☐ Either oral or written agreement
- (1 mark)
-
- 9.3 'Holding out' is a key element of which form of agency?
- ☐ Agency by implied agreement
 - ☐ Agency by estoppel
 - ☐ Agency by necessity
- (1 mark)
-
- 9.4 Which type of agent authority is derived from what is usual or customary in the circumstances?
- ☐ Express authority
 - ☐ Ostensible authority
 - ☐ Implied authority
- (1 mark)
-
- 9.5 When combined, which types of agent authority are known as an agent's actual authority?
- ☐ Express and implied authority
 - ☐ Implied and ostensible authority
 - ☐ Express and apparent authority
- (1 mark)
-
- 9.6 Unless circumstances indicate otherwise, which party is **NOT** liable under a contract properly formed under an agency agreement?
- ☐ Agent
 - ☐ Principal
 - ☐ Third party
- (1 mark)
-
- 9.7 Which of the following statements regarding agency law is correct?
- ☐ An agent may not enforce a contract that they helped to form
 - ☐ A principal may sue their agent if the third party is in breach of contract
 - ☐ A third party and principal do not need to be in direct contact for a binding contract between them to be formed
- (1 mark)
-
- 9.8 Which type of agent runs an accountancy practice?
- ☐ Company director
 - ☐ Partner
 - ☐ Commercial agent
 - ☐ Promoter
- (2 marks)
-
- 9.9 Which of the following statements concerning a principal ratifying a contract formed by an agent is correct?
- ☐ The principal need not have existed when the contract was made
 - ☐ The principal need not have had legal capacity when the contract was made
 - ☐ The principal must communicate their ratification of the contract clearly to the third party
 - ☐ At least half of the provisions of the contract must be ratified
- (2 marks)

9.10 Which **TWO** types of agency are formed without the agent's consent?

- ☐ Agency by implied agreement
- ☐ Agency by express agreement
- ☐ Agency by estoppel
- ☐ Agency by ratification

(2 marks)

9.11 In agency law, which of the following statements relates to agency by estoppel, and which relates to agency by necessity?

	Agency by estoppel	Agency by necessity
There is no agency agreement but the principal states publicly that a person is their agent	<input type="radio"/>	<input type="radio"/>
There is no agency agreement but the principal looks after another person's property when they cannot be contacted	<input type="radio"/>	<input type="radio"/>

(2 marks)

9.12 Which of the following is included in an agent's ostensible authority?

- ☐ The authority that the third party expects the agent to have
- ☐ The authority that the agent states that they have
- ☐ The authority that is usual in the circumstances and what the principal impliedly gives the agent
- ☐ The authority that the principal expressly gives the agent

(2 marks)

9.13 In which of the following circumstances will an agent's apparent authority arise?

- ☐ When the principal tells the agent orally what the limit of their authority is
- ☐ What a third party determines the agent's authority is from what is usual in the circumstances
- ☐ When, without the principal being aware, an agent tells a third party what their authority is
- ☐ Where a principal has represented a person to third parties as being their agent, despite not actually appointing the person as such

(2 marks)

9.14 In which of the following circumstances will an agency relationship **NOT** be terminated?

- ☐ Bankruptcy of principal
- ☐ Death of principal
- ☐ Insanity of principal
- ☐ Performance by the principal of their contractual obligations

(2 marks)

9.15 In which **TWO** of the following situations will an agent be liable on a contract?

- ☐ Where it is usual business practice for the agent to be liable
- ☐ Where the agent acts on their own behalf even though they purport to be acting for the principal
- ☐ Where the principal intends for the agent to take personal liability
- ☐ Where the third party agrees with the principal that the agent will be liable

(2 marks)

(Total = 23 marks)

10 Partnerships

28 mins

10.1 Which of the following statements regarding partnerships is correct?

- ☐ A partnership must exist for more than a single business transaction
- ☐ The business must be profitable
- ☐ A partner can be an individual living person or a registered company

(1 mark)

10.2 In which form of partnership is there a partner that invests in the partnership but does not take part in the day-to-day running of the business?

- ☐ Unlimited liability partnership
- ☐ Limited partnership
- ☐ Limited Liability Partnership

(1 mark)

10.3 As a minimum, which of the following formalities is necessary to form an unlimited liability partnership?

- ☐ A written partnership agreement
- ☐ A decision by the partners to set up business together
- ☐ Registration of the partnership at Companies House

(1 mark)

10.4 A partner's actual authority to bind the partnership in a contract is determined by which of the following?

- ☐ The perception third parties have of the purpose of the partnership
- ☐ What is agreed between the partners
- ☐ The actual purpose of the partnership

(1 mark)

10.5 Which of the following statements concerning retiring partners is correct?

- ☐ Retiring partners are not liable for any partnership debts after they leave
- ☐ Retiring partners are liable only for existing partnership debts when they leave, unless third parties are notified that they have retired
- ☐ Retiring partners are responsible for existing partnerships debts when they leave and partnership debts incurred after their retirement, unless third parties are notified of their retirement

(1 mark)

10.6 Under the Partnership Act 1890, which of the following events will cause a partnership to be terminated?

- ☐ Loss of 50% of the partnership's capital
- ☐ The partnership incurring losses for three consecutive years
- ☐ Bankruptcy of a partner

(1 mark)

10.7 When a partnership is terminated, which of the following is paid off first from the funds raised from the sale of assets?

- ☐ External debts
- ☐ Loans from partners
- ☐ Partners' capital contributions

(1 mark)

10.8 Which of the following statements regarding Limited Liability Partnerships is correct?

- ☐ A written partnership agreement is required to form the partnership
- ☐ The partnership dissolves when a partner leaves
- ☐ The partnership must have two designated members who are responsible for the publicity requirements of the partnership
- ☐ The partnership is exempt from audit

(2 marks)

- 10.9 Which of the following is true regarding Limited Liability Partnerships?
- ☐ The partnership is liable for its own debts
 - ☐ The partnership does not need to file accounts with the Registrar of Companies
 - ☐ One partner may not take part in the day-to-day running of the partnership
 - ☐ Where the partnership cannot pay its own debts, the partners are jointly liable up to an amount they have guaranteed
- (2 marks)**

- 10.10 When forming an unlimited liability partnership, a partnership agreement may be written. Which **TWO** statements regarding written partnership agreements are correct?
- ☐ Terms in the agreement override terms implied by the Partnership Act 1890
 - ☐ Written partnership agreements are required by law where there are more than 20 partners in the partnership
 - ☐ Written partnership agreements must be in the form of a deed
 - ☐ Written partnership agreements are not required on formation and may be created at any point in the life of the partnership
- (2 marks)**

- 10.11 Which of the following is true concerning partnerships and legal charges?
- ☐ Partnerships can grant fixed charges only
 - ☐ Partnerships can grant floating charges only
 - ☐ Partnerships can grant both fixed and floating charges
 - ☐ Partnerships cannot grant fixed or floating charges
- (2 marks)**

- 10.12 Which of the following debts will a new partner in a partnership be liable for?
- | | Liable | Not liable |
|--|-----------------------|-----------------------|
| Existing partnership debts on the day they are admitted to the partnership | <input type="radio"/> | <input type="radio"/> |
| All partnership debts incurred after their admission to membership | <input type="radio"/> | <input type="radio"/> |
- (2 marks)**

- 10.13 Which of the following is necessary to terminate a Limited Liability Partnership?
- ☐ Formal liquidation
 - ☐ A court order
 - ☐ An order from the Registrar of Companies
 - ☐ A deed signed by the partners
- (2 marks)**

- 10.14 When an unlimited liability partnership is terminated, which of the following is paid off last out of funds realised from the partnership assets?
- ☐ Partners' share of partnership profits
 - ☐ Partners' capital contribution
 - ☐ Partnership loans
 - ☐ External debts
- (2 marks)**

- 10.15 Under the Partnership Act 1890, which **TWO** of the following events will terminate an unlimited liability partnership?
- ☐ Notice by a partner
 - ☐ The end of an agreed fixed period of time for the partnership
 - ☐ Absence of a partner
 - ☐ Disagreement between the partners
- (2 marks)**

(Total = 23 marks)

11 Corporations and legal personality

28 mins

11.1 Which of the following is a benefit of running a business as a sole trader?

- ☐ No formal procedures to set up the business
- ☐ The business is highly dependent on the owner
- ☐ An absence of economies of scale

(1 mark)

11.2 Which of the following statements regarding sole traders is correct?

- ☐ The business is legally distinct from the owner
- ☐ All of a sole trader's profits accrue to the owner
- ☐ Sole traders do not need to register for VAT

(1 mark)

11.3 In a company limited by shares, what is the limit of a member's liability?

- ☐ The amount they guaranteed to pay in the event of the company being liquidated
- ☐ The amount of share capital they have purchased, including any amounts outstanding on the shares that they own
- ☐ Nothing, the company is liable for its own debts

(1 mark)

11.4 Which type of company does **NOT** have share capital?

- ☐ An unlimited liability company
- ☐ A public company
- ☐ A company limited by guarantee

(1 mark)

11.5 How much is the minimum issued share capital of a public company?

- ☐ £12,500
- ☐ £25,000
- ☐ £50,000

(1 mark)

11.6 Which of the following is an effect of a company's separate legal personality?

- ☐ Members and directors of a company are protected from the force of the law
- ☐ The company is liable for its own debts
- ☐ Members have no liability in the event of the company being insolvent

(1 mark)

11.7 In which of the following situations will the courts lift the veil of incorporation?

- ☐ Where a director commits fraudulent trading
- ☐ Where a member of a solvent company fails to pay the company what is outstanding on their share capital
- ☐ Where an employee commits a tort in the course of their employment

(1 mark)

11.8 Which of the following indicates that a business is being run as a sole trader?

- ☐ The business does not employ any employees
- ☐ It does not file accounts with the Registrar of Companies
- ☐ The business is run by one person who is not legally distinct from the business
- ☐ Share capital of the business is not sold on a recognised stock exchange

(2 marks)



- 11.9 A group of friends wish to set up a business. They wish to limit their liability for the business' debts to an amount that they agree to when the business is formed.

Which of the following businesses is most suitable to the needs of the group?

- ☐ An unlimited company
- ☐ A company limited by shares
- ☐ A partnership
- ☐ A corporation sole

(2 marks)

- 11.10 Which **TWO** of the following are true regarding public companies?

- ☐ A public company must have a minimum of two members
- ☐ A public company must have a minimum of two directors
- ☐ A public company cannot be an unlimited liability company
- ☐ A public company must have 'Ltd' at the end of its name

(2 marks)

- 11.11 Which of the following is **NOT** a criterion that a company must meet if it is to qualify for the small companies' regime?

- ☐ Balance sheet total of not more than £5.1 million
- ☐ Net profit of no more than £1.0 million
- ☐ Turnover of not more than £10.2 million
- ☐ An average of 50 or fewer employees

(2 marks)

- 11.12 Which term is used to describe the type of company that has its shares traded on a public stock exchange?

- ☐ Listed company
- ☐ Public company
- ☐ Private company
- ☐ Unlimited company

(2 marks)

- 11.13 Which of the following statements regarding parent companies is **NOT** correct?

- ☐ A company is a parent company if it holds the majority of the voting rights in another company
- ☐ A company is a parent company if it has the right to exercise dominant influence over another company
- ☐ A company is a parent company if it holds debentures in another company
- ☐ A company is a parent company of any subsidiaries that its subsidiary company controls

(2 marks)

- 11.14 Which of the following statements in regards to a company's legal personality is correct?

- ☐ Separate legal personality exempts members from liability if the company is liquidated
- ☐ Separate legal personality only applies to private limited companies
- ☐ Separate legal personality does not apply to unlimited liability companies
- ☐ Separate legal personality can be ignored in certain circumstances

(2 marks)

- 11.15 In which **TWO** of the following circumstances may the veil of incorporation be lifted?

- ☐ To allow directors of insolvent companies to be found liable for the debts of the company
- ☐ To treat a group company as a single economic entity
- ☐ To allow an auditor access to company records
- ☐ To allow a private company to re-register as a public company

(2 marks)

(Total = 23 marks)

12 Company formation

28 mins

12.1 Which of the following describes the general duty of a promoter?

- ☐ Reasonable skill and care
- ☐ Competence and accuracy
- ☐ Due diligence

(1 mark)

12.2 Which of the following statements concerning pre-incorporation contracts is correct?

- ☐ Pre-incorporation contracts must be ratified by the company
- ☐ Pre-incorporation contracts cannot be ratified by the company
- ☐ Pre-incorporation contracts can be ratified by the company if the third party agrees

(1 mark)

12.3 Which of the following parties is **NOT** liable on a pre-incorporation contract?

- ☐ The company
- ☐ The promoter
- ☐ The third party

(1 mark)

12.4 Which of the following criteria must a public company meet before it can trade?

- ☐ It must obtain a trading certificate from the Registrar of Companies
- ☐ Its shares must be listed on a stock exchange
- ☐ It must have appointed an auditor

(1 mark)

12.5 Which of the following criteria must a private company meet before it can trade?

- ☐ It must have obtained a trading certificate from the Registrar of Companies
- ☐ It must have obtained a certificate of incorporation from the Registrar of Companies
- ☐ The members must have agreed to set up the company

(1 mark)

12.6 Which of the following company books is a public company **NOT** legally required to keep?

- ☐ Register of people with significant control
- ☐ Register of debentureholders
- ☐ Register of disclosed interests in shares

(1 mark)

12.7 Which of the following is true regarding a register of directors?

- ☐ The register must include shadow directors
- ☐ The register must be made available for inspection by company members for a fee
- ☐ The register must include a service address for each director

(1 mark)

12.8 The role of which of the following parties is to form a company?

- ☐ Subscriber
- ☐ Member
- ☐ Director
- ☐ Promoter

(2 marks)

12.9 Which of the following statements concerning promoters is correct?

- ☐ An accountant who acts in a professional capacity in the formation of a company is a promoter
- ☐ A promoter may not make a profit as a result of their position
- ☐ A promoter that acts as an agent for others must not put themselves into a position where their own interests clash with that of the company they are forming
- ☐ A promoter may not own shares in the company that they are forming

(2 marks)

12.10 Which **TWO** of the following are methods that a promoter can use to avoid liability on pre-incorporation contracts?

- ☐ Signing the pre-incorporation contract 'on behalf of the company'
- ☐ Executing the pre-incorporation contract as a deed
- ☐ Buying an 'off-the-shelf' company
- ☐ Novating the contract

(2 marks)

12.11 To register a company, a number of documents must be submitted to the Registrar of Companies.

Which of the following is **NOT** a document that needs to be sent to the Registrar to register a company?

- ☐ Articles of association
- ☐ Memorandum of association
- ☐ Statement of compliance
- ☐ Statement of proposed officers

(2 marks)

12.12 A promoter sent the documents needed to register a company to the Registrar of Companies on 1/1/X1. The Registrar received the documents on 4/1/X1. The certificate of incorporation is dated 6/1/X1 and it is received by the promoter on 8/1/X1.

On which date was the company incorporated?

- ☐ 1/1/X1
- ☐ 4/1/X1
- ☐ 6/1/X1
- ☐ 8/1/X1

(2 marks)

12.13 In which of the following circumstances must a public company re-register as a private company?

- ☐ If the market value of its shares falls below the nominal value of the shares
- ☐ If it makes trading losses for three consecutive years
- ☐ If it fails to pay its corporation tax liability
- ☐ If its share capital falls below £50,000

(2 marks)

12.14 Which of the following roles is **NOT** performed by the Registrar of Companies?

- ☐ Issuing each company's Certificate of Incorporation
- ☐ Registering companies that will be sold 'off-the-shelf'
- ☐ Filing a copy of each company's Register of Members
- ☐ Filing copies of each company's special resolutions

(2 marks)

12.15 Which **TWO** of the following correctly describe the requirements for private and public companies to keep accounting records?

- ☐ Private companies must keep their accounting records for three years
- ☐ Private companies must keep their accounting records for six years
- ☐ Public companies must keep their accounting records for six years
- ☐ Public companies must keep their accounting records for seven years

(2 marks)

(Total = 23 marks)

13 Constitution of a company

28 mins

13.1 Which of the following parties signs a company's memorandum of association?

- ☐ The promoter
- ☐ The directors
- ☐ The subscribers

(1 mark)

13.2 Which of the following is true of model articles of association?

- ☐ Model articles of association describe how the company is to be managed and administered
- ☐ A company must only use the model articles of association that are relevant to its type of company
- ☐ The content of model articles of association cannot be amended by the members

(1 mark)

13.3 Which of the following is **NOT** something that would be found within model articles of association?

- ☐ Clauses relating to the rights of members
- ☐ Clauses relating to the transfer of shares
- ☐ Clauses relating to the mission statement of the company

(1 mark)

13.4 Which of the following statements regarding changing a company's articles of association is correct?

- ☐ A company may only change its articles once in a financial year
- ☐ A company requires a special or written resolution with a 75% majority to change its articles
- ☐ A company must send copies of the amended articles to the Registrar of Companies within 28 days of the amendment taking place

(1 mark)

13.5 Which of the following changes to a company's articles of association is void?

- ☐ Changes that allow a member additional votes so that they may block company resolutions on certain issues
- ☐ Changes that restrict the objects of the company
- ☐ Changes that conflict with the Companies Act

(1 mark)

13.6 Which of the following is a correct rule concerning company names?

- ☐ A company may be required to change its name if it is deemed offensive by the Secretary of State
- ☐ A company may not set its own rules for changing its name
- ☐ A company may not have a name that suggests a connection with the government

(1 mark)

13.7 Are companies permitted to change their names and domiciles?

- ☐ A company may change its name but not its domicile
- ☐ A company may change its domicile but not its name
- ☐ A company may change its name and its domicile

(1 mark)

13.8 Which of the following parties is contractually bound by a company's constitution?

- ☐ The company
- ☐ Members in a capacity other than as a member
- ☐ Company directors
- ☐ Third parties with a business relationship with the company

(2 marks)

13.9 A company may have restricted objects and therefore it may not be permitted to enter into certain contracts.

Which of the following statements describes the position of third parties whose contract with a company is outside the scope of its objects?

- ☐ The contract will not be a valid one
- ☐ The company is required to ratify the contract for it to be binding on the third party
- ☐ The contract will be binding on the company and the third party
- ☐ The contract is voidable at the instance of the company

(2 marks)

13.10 Which **TWO** of the following are included in the content of a company's model articles of association?

- ☐ Payment of dividends
- ☐ Payment of charitable donations
- ☐ Formation of a remuneration committee
- ☐ Appointment of directors

(2 marks)

13.11 Which of the following is true regarding the content of model articles of association?

- ☐ The content of model articles of association is the same for all types of company
- ☐ The content of model articles of association includes clauses relating to the remuneration of employees
- ☐ The content of model articles of association includes clauses relating to the ethical treatment of suppliers
- ☐ The content of model articles of association includes clauses relating to communication with members

(2 marks)

13.12 Which of the following resolutions are sufficient to alter a company's constitution?

	Sufficient	Insufficient
Ordinary resolution of a plc	<input type="radio"/>	<input type="radio"/>
Written resolution of a private company with a 75% majority	<input type="radio"/>	<input type="radio"/>

(2 marks)

13.13 Which of the following statements concerning restrictions on a company altering its constitution are true or false?

	True	False
An alteration may not compel members to purchase more shares in the company	<input type="radio"/>	<input type="radio"/>
An alteration must be bona fide for the benefit of all the company's members	<input type="radio"/>	<input type="radio"/>

(2 marks)

13.14 Which of the following is true regarding the choice of company name?

- ☐ No name may be offensive or sensitive as defined by the Secretary of State
- ☐ All private companies must end their name with 'Ltd'
- ☐ Names that suggest a connection with the government are void
- ☐ Companies that are registered as Welsh must end their name with '(Cym)'

(2 marks)

13.15 Which **TWO** statements concerning company names and passing-off action are correct?

- ☐ Only the Company Names Adjudicators can create a new company name, if one is needed, following a complaint about a company name that is too similar to another
 - ☐ A passing-off action will fail if the claimant has not sought a remedy from the Company Names Adjudicators first
 - ☐ A company can be prevented by a court injunction from using its name, even if it is properly registered
 - ☐ Courts can refuse an injunction to prevent the use of a company name if the businesses are sufficiently different in nature
- (2 marks)**

(Total = 23 marks)

14 MTQ Bank 3

36 mins

- 14.1 Ham, Sam, Tam and Cam formed a partnership to run a petrol station. The partnership agreement expressly stated that the partnership business was to be limited exclusively to the sale of petrol.

In January 20X8 Sam received \$10,000 from the partnership's bank drawn on its overdraft facility. He told the bank that the money was to finance a short-term partnership debt but in fact he used the money to pay for a round the world cruise. In February 20X8 Tam entered into a \$15,000 contract on behalf of the partnership to buy a stock of bicycles, which he hoped to sell from the garage forecourt.

In March 20X8 Cam retired from the partnership but the creditors were not notified of his retirement until May 20X8. In April 20X8 the partnership's bank refused to honour its cheque for the payment of its monthly petrol account, on the basis that there were no funds in its account and it had reached its overdraft facility.

- (a) Which statement concerning the liability of the partners for the overdraft is correct?
- ☐ Only Sam is liable to repay the overdraft because he used the funds for his own personal use
 - ☐ Only Sam is liable to repay the overdraft because he lied to the bank about how he would use the money
 - ☐ None of the partners are liable to repay the overdraft because the funds were not used for legitimate partnership expenses
 - ☐ All of the partners are liable to repay the overdraft because Sam had authority to withdraw the funds
- (2 marks)**
- (b) Which statement concerning the liability of the partners for the bicycles is correct?
- ☐ All of the partners are liable because Tam has apparent authority to enter into the contract on behalf of the partnership
 - ☐ None of the partners are liable because the contract is outside the scope of the partnership agreement
 - ☐ Only Tam is liable because he authorised the contract which is outside the scope of the partnership agreement
 - ☐ All of the partners are liable because the contract is within the scope of the partnership's trade
- (2 marks)**
- (c) Which of the partners are liable for the petrol account debt?
- ☐ Ham, Sam, Tam and Cam
 - ☐ None of the partners
 - ☐ Ham, Sam, and Tam only
 - ☐ Cam only
- (2 marks)**

(Total = 6 marks)

-
- 14.2 Mick has operated a house building business as a sole trader for a number of years. The business is growing and in recent times, Mick has taken out a business loan to buy business assets. Mick is considering tendering for a couple of very large contracts that should earn the business substantial sums, but also increases his potential liability if he is in breach of contract.

Now his accountant has recommended that he should consider registering as a company in order to gain the benefits of separate corporate personality.

- (a) Which of the following describes separate legal personality?
- ☐ The business and its owners are viewed as the same legal person, separate from other business organisations
 - ☐ The business is viewed as a legal person in its own right, separate from its owners
 - ☐ The business and its directors are viewed as the same legal person separate from the business' owners
 - ☐ The business and its employees are viewed as the same legal person, separate from the business' owners
- (2 marks)**
- (b) Identify which of the following are benefits to Mick of incorporating the business.
- | | Benefit | Not a benefit |
|---|-----------------------|-----------------------|
| The company, rather than Mick, will be liable for any negligence claims made against the business | <input type="radio"/> | <input type="radio"/> |
| The limit of Mick's liability in respect of the business will be any amount unpaid on his shares | <input type="radio"/> | <input type="radio"/> |
| The company will be liable for the business loan rather than Mick | <input type="radio"/> | <input type="radio"/> |
| The company can enter into the new contracts in its own right | <input type="radio"/> | <input type="radio"/> |
- (4 marks)**
(Total = 6 marks)

14.3 Doc, a supplier of building materials, entered into the following transactions:

An agreement to sell some goods to a longstanding friend, Ed. The contractual document, however, actually stated that the contract was made with Ed's company, Ed Co. Although the materials were delivered, they have not been paid for and Doc has learned that Ed Co has just gone into insolvent liquidation.

Doc had employed a salesman, Fitt, whose contract of employment contained a clause preventing him from approaching any of Doc's clients for a period of two years after he had left Doc's employment. Doc has found out that, on stopping working for him, Fitt has started working for a company, Gen Co, wholly owned by Fitt and his wife, and is approaching contacts he had made while working for Doc.

- (a) Which **TWO** of the following are consequences of limited liability in regards to a private company limited by shares?
- ☐ The company's creditors may not demand payment for the company's debts from the members.
 - ☐ The limit of the members' liability is the amount unpaid on their shares.
 - ☐ The limit of the members' liability is what they agreed to when they purchased their shares.
 - ☐ The company's creditors may only demand payment for the company's debts from the members in the event of a compulsory liquidation.
- (2 marks)**
- (b) Which statement concerning the clause in Fitt's employment contract is correct?
- ☐ A court may lift the veil of incorporation to enforce the clause against Fitt
 - ☐ Doc can seek the just and equitable winding-up of Gen Co if Fitt does not fulfill his obligations
 - ☐ Doc may not enforce the clause against Fitt because Fitt is protected by limited liability
 - ☐ Doc may not enforce the clause against Fitt because Gen Co is a quasi-partnership
- (2 marks)**

(c) Which statement concerning Ed Co's debt is correct?

- ☐ Doc cannot pursue the debt because Ed Co is insolvent
- ☐ Doc can pursue Ed personally for the debt because Ed Co is insolvent
- ☐ Doc may only pursue Ed Co for the debt
- ☐ Doc cannot pursue Ed or Ed Co for the debt

(2 marks)

(Total = 6 marks)

14.4 Don was instrumental in forming Eden Inc, which was registered and received its trading certificate in December 20X4. It has subsequently come to the attention of the board of directors that the following events had taken place prior to the incorporation of the company:

Don entered into a contract in the company's name to buy computer equipment, which the board of directors does not wish to honour.

Don entered into a contract in the company's name to develop a particular patent, which the board of directors of Eden wishes to pursue but in relation to which the other party does not wish to proceed.

Don entered into a contract with Fad Co for business equipment. The contract was made 'subject to adoption by Eden Inc' but now Eden Inc does not wish to pursue it.

(a) Which of the following statements concerning the contract to buy computer equipment is correct?

- ☐ Eden Inc is liable on the contract because correctly entered it into a pre-incorporation contract
- ☐ The directors are bound to honour the contract even though Eden Inc is not technically liable on it
- ☐ Don is liable on the contract as Eden Inc was not in existence when it was formed
- ☐ The contract is void because Eden Inc was not in existence when it was formed

(2 marks)

(b) Identify whether the following contracts are enforceable or not enforceable.

	Enforceable	Not enforceable
Patent	<input type="radio"/>	<input type="radio"/>
Business equipment	<input type="radio"/>	<input type="radio"/>

(4 marks)

(Total = 6 marks)

14.5 Fred is a member of Glad Co, a small publishing company, holding 100 of its 500 shares; the other 400 shares are held by four other members. It has recently become apparent that Fred has set up a rival business to Glad Co and the other members have decided that he should be expelled from the company.

To that end, they propose to alter the articles of association to include a new power to 'require any member to transfer their shares for fair value to the other members upon the passing of a resolution so to do'.

(a) A company's articles of association form a contract between the company and which of the following parties?

- ☐ The company's suppliers
- ☐ The company secretary
- ☐ The company's shareholders
- ☐ The company's auditor

(2 marks)

(b) By which **TWO** of the following methods can Glad Co amend its articles of association?

- ☐ Ordinary resolution
- ☐ Special resolution
- ☐ Written resolution
- ☐ Extra-ordinary resolution

(2 marks)

(c) Will the other members of Glad Co will be successful in their attempt to change the articles and require Fred to transfer his shares to them and why?

- ☐ Yes – because the other members own 80% of the shares and can pass a special resolution
- ☐ Yes – because the amendment is for the benefit of the company as a whole and therefore no vote is required
- ☐ No – because the other members need a 90% majority to pass the required amendment
- ☐ No – because requiring 'any member' to transfer their shares at a fair price does not benefit the company

(2 marks)

(Total = 6 marks)

(Total = 30 marks)

15 Share capital

28 mins

15.1 As a minimum, how many members must a public company have?

- ☐ One
- ☐ Two
- ☐ Three

(1 mark)

15.2 Which of the following statements regarding ordinary share capital is correct?

- ☐ Dividends must be paid on ordinary share capital every financial year
- ☐ On liquidation of the company, ordinary shares entitle the shareholder to have their capital repaid ahead of other creditors
- ☐ Ordinary shares may or may not have voting rights attached

(1 mark)

15.3 Which of the following statements regarding treasury shares is correct?

- ☐ Only public limited companies may create treasury shares
- ☐ A company may exercise voting rights on its treasury shares
- ☐ Treasury shares may be reissued for cash without the usual issuing formalities

(1 mark)

15.4 Which of the following describes the public offer method of allotting shares by a public company?

- ☐ An offer is made to the public to apply for shares based on information in a prospectus
- ☐ Members of the public subscribe for shares directly to the company
- ☐ Shares are offered in a small number of large blocks to persons or institutions who have previously agreed to purchase the shares at a pre-determined price

(1 mark)

15.5 Which of the following describes a rights issue?

- ☐ An offer to existing shareholders to purchase further shares in the company
- ☐ The allotment of additional shares to existing shareholders in proportion to their holdings
- ☐ An offer to debentureholders to purchase shares in the company

(1 mark)

15.6 Which of the following statements regarding issuing shares is correct?

- ☐ Shares must be issued at their nominal value
- ☐ Shares may be issued at a discount to their nominal value
- ☐ Shares may be issued at a premium to their nominal value

(1 mark)

15.7 Which of the following is true concerning issuing shares?

- ☐ A company must receive full payment of the nominal value of a share when it is issued
- ☐ A shareholder who did not pay the full nominal value of their share on issue, must pay any unpaid amount before selling the share
- ☐ Where a shareholder did not pay the full nominal value of their share on issue, the debt transfers to the new shareholder if the share is sold

(1 mark)

15.8 Which of the following describes a company's called-up share capital?

- ☐ The amount the company has required shareholders to pay on existing shares
- ☐ The type, class, number and amount of shares issued and allotted to shareholders
- ☐ The amount shareholders have paid on existing shares
- ☐ The maximum amount of share capital that a company can have in issue

(2 marks)

15.9 Which of the following is correct concerning the market value of a company's shares?

- ☐ Market value must be greater than nominal value
- ☐ Market value must be lower than nominal value
- ☐ Market value equals nominal value
- ☐ Market value may be equal to, greater or lower than nominal value

(2 marks)

15.10 Which **TWO** of the following statements regarding preference shares are correct?

- ☐ A company is compelled to pay dividends on preference shares every financial year
- ☐ Preference shares do not normally entitle the shareholder to vote in company meetings
- ☐ Preference shareholders usually have a right to have their capital returned in the event of a liquidation ahead of ordinary shareholders
- ☐ In the event of a liquidation, preference shareholders have the right to share in any surplus assets ahead of the ordinary shareholders

(2 marks)

15.11 With regard to share capital, which of the following constitutes a variation of class rights?

- ☐ Issuing shares of the same class to allottees who are not already members of the class
- ☐ Returning capital to preference shareholders
- ☐ Subdividing shares of another class with the incidental effect of increasing the voting strength of that other class
- ☐ Changing the amount of dividend payable to a class of preference share

(2 marks)

15.12 Which of the following is true regarding the power of directors to allot shares?

- ☐ Directors of private companies with one class of share have the power to allot shares unless restricted by the articles
- ☐ Directors of all private companies have the power to allot shares unless restricted by the articles
- ☐ Directors of private and public companies with one class of share have the power to allot shares unless restricted by the articles
- ☐ Directors of all private and public companies have the power to allot shares unless restricted by the articles

(2 marks)

15.13 Pre-emption rights are granted in which of the following situations?

- ☐ A company proposes to allot ordinary shares wholly for cash
- ☐ A company proposes to allot ordinary shares
- ☐ A company proposes to allot preference shares wholly for cash
- ☐ A company proposes to allot preference shares

(2 marks)

15.14 Which of the following statements regarding payment for shares is correct?

- ☐ Public company shares must always be paid for in cash
- ☐ At the time of allotment, a public company must receive payment of at least 50% of the nominal value of the shares
- ☐ A private company may allot shares for inadequate consideration by accepting goods or services at an over-value
- ☐ A private company must have non-cash consideration independently valued before accepting it as payment for shares

(2 marks)

15.15 Which **TWO** of the following are valid uses of a share premium account?

- ☐ To issue fully paid shares under a bonus issue
- ☐ To pay issue costs and expenses in respect of a new share issue
- ☐ To issue fully paid shares under a rights issue
- ☐ To purchase treasury shares

(2 marks)

(Total = 23 marks)

16 Loan capital

28 mins

16.1 Which of the following is true regarding the borrowing powers of companies?

- ☐ All companies registered under the Companies Act 2006 have an implied power to borrow
- ☐ The members of public companies registered under the Companies Act 2006 must authorise the company to borrow
- ☐ The Companies Act 2006 sets a maximum limit on the amount each type of company may borrow

(1 mark)

16.2 In relation to debentures issued as a series, which of the following describes the term *pari passu*?

- ☐ All debentures rank equally
- ☐ Older debentures rank above newer debentures
- ☐ Higher value debentures rank above lower value debentures

(1 mark)

16.3 Which of the following differences between share capital and debentures is correct?

- ☐ Dividend payments on shares is tax-deductible, interest payments on debentures is not tax-deductible
- ☐ Interest payments on debentures is mandatory, dividend payments on shares is discretionary
- ☐ In the event of liquidation, shareholders are paid their investment back before the debentureholders

(1 mark)

16.4 Which of the following charges on the same asset, all of which have been properly registered, has the highest priority? Assume all chargeholders are unaware of the other charges.

- ☐ A floating charge with a value of \$5,000 registered on 1 January 20X1
- ☐ A fixed charge with a value of \$2,000 registered on 1 February 20X1
- ☐ A floating charge with a value of \$7,000 registered on 1 March 20X1

(1 mark)

16.5 Which of the following events will cause a floating charge to crystallise?

- ☐ Resignation of the finance director
- ☐ The chargee appointing a receiver
- ☐ Sale of the assets subject to the charge

(1 mark)

16.6 How many days after creation must a charge be registered in order for it to be valid and enforceable?

- ☐ 7
- ☐ 14
- ☐ 21

(1 mark)

16.7 Which of the following is true concerning late registration of a company charge?

- ☐ A charge may not be registered late
- ☐ A charge may be registered late, but only if the permission of the Registrar of Companies is obtained
- ☐ A charge may be registered late if it does not prejudice the creditors or shareholders of the company

(1 mark)

16.8 Which of the following statements regarding directors' borrowing powers is correct?

- ☐ Where directors borrow for a non-business purpose, the loan contract is unenforceable by the lender
- ☐ Where directors borrow a greater amount than they have the power to, the loan contract is unenforceable by the lender
- ☐ Where directors exceed their borrowing powers, the company may ratify the loan contract if it is within the capacity of the company
- ☐ Where directors borrow for a business purpose, the loan contract is unenforceable unless it is supported by a company charge

(2 marks)

16.9 Which of the following **MUST** be created using a debenture trust deed?

- ☐ A single debenture
- ☐ Debenture stock
- ☐ Series debentures
- ☐ Register of debentureholders

(2 marks)

16.10 Which **TWO** of the following are advantages of using a debenture trust deed?

- ☐ The deed creates a charge or charges over the company's assets which creates security
- ☐ A single trustee of the debentureholders is appointed so the company only has to deal with one person
- ☐ Debentures covered by a debenture trust deed have a higher priority of repayment on liquidation than debentures not covered by a deed
- ☐ The process of selling a debenture covered by a debenture trust deed is substantially faster than the process of selling a debenture not covered by a debenture trust deed

(2 marks)

16.11 Which of the following statements regarding the differences between loan capital and share capital is correct?

- ☐ Unlike loan capital, share capital does not have to be repaid
- ☐ Loan capital has voting rights attached but share capital does not
- ☐ Share capital offers the holder more security than loan capital
- ☐ Share capital is transferable but loan capital is not

(2 marks)

16.12 Which of the following statements regarding the differences between loan capital and share capital is **NOT** correct?

- ☐ A shareholder is an owner of the company, a debentureholder is not
- ☐ Shares may not be issued at a discount to their nominal value, debentures may be issued at a discount to their nominal value
- ☐ A public sale of shares is known as a prospectus, the public sale of debentures is known as a listing
- ☐ There are statutory restrictions on redeeming shares, there are no statutory restrictions on redeeming debentures

(2 marks)

16.13 Which of the following is the purpose of a 'negative pledge' clause on a company charge?

- ☐ To prevent the company from issuing a subsequent charge on the same asset
- ☐ To prevent the company from selling the asset without the chargee's permission
- ☐ To prevent the company from using the asset without the chargee's permission
- ☐ To ensure the company pays the proceeds from the sale of the asset to the chargeholder

(2 marks)

16.14 Which of the following statements relates to fixed charges and which relates to floating charges?

	Fixed charges	Floating charges
This charge attaches to an asset once an event occurs that causes it to crystallise	<input type="radio"/>	<input type="radio"/>
This charge prevents the company from dealing with the charged asset without the permission of the chargeholder	<input type="radio"/>	<input type="radio"/>

(2 marks)

16.15 Which **TWO** of the following are true concerning the registration of company charges?

- ☐ Charges must be registered within 21 days of creation
- ☐ If a charge is not registered on time then the company and its officers who created the charge are liable to a fine
- ☐ The Registrar of Companies is permitted to rectify a mistake in the registration documents of a charge with the permission of the chargeholder
- ☐ Non-registered charges are valid and enforceable with the permission of the Registrar of Companies

(2 marks)

(Total = 23 marks)

17 Capital maintenance and dividend law

28 mins

17.1 What is the principle of capital maintenance?

- ☐ Companies should not make payments out of capital to the detriment of creditors
- ☐ Companies should seek to maintain or increase their capital at all times
- ☐ Companies should maintain the ratio of their debt and equity capital

(1 mark)

17.2 Which of the following statements regarding reduction of capital is correct?

- ☐ A limited company requires a court order to cancel unissued shares
- ☐ A limited company requires a special resolution of its members to cancel unissued shares
- ☐ A limited company is permitted without restriction to cancel its unissued shares

(1 mark)

17.3 Which of the following is required to permit a private company to reduce its share capital without application to a court?

- ☐ A special resolution only
- ☐ A special resolution and a solvency statement from the directors
- ☐ Authority in the articles and an ordinary resolution

(1 mark)

17.4 Which of the following is required to permit a public company to reduce its share capital?

- ☐ A special resolution and a solvency statement from the directors
- ☐ A special resolution and court approval
- ☐ Authority in the articles and a special resolution

(1 mark)

17.5 Which type of dividend is paid by the issue of additional shares?

- ☐ Scrip dividends
- ☐ Capital dividends
- ☐ Equity dividends

(1 mark)

17.6 At which point before its payment does a dividend become a debt of the company?

- ☐ When it is declared by the company in general meeting
- ☐ When it is recorded in the financial statements
- ☐ When the company's bank receives the instruction to make the payment

(1 mark)

17.7 Which of the following is an undistributable reserve for the payment of a dividend?

- ☐ Accumulated realised profits
- ☐ Retained earnings
- ☐ Capital redemption reserve

(1 mark)

17.8 The rules of capital maintenance exist to primarily protect which of the following parties?

- ☐ A company's members
- ☐ A company's creditors
- ☐ A company's customers
- ☐ The government

(2 marks)

17.9 Which of the following is **NOT** a valid method that a company may use to reduce its share capital according to the Companies Act 2006?

- ☐ Pay off part of paid-up share capital out of surplus profits
- ☐ Extinguish liability on partly paid shares
- ☐ Buy back fully paid up share capital from shareholders using cash not surplus profit
- ☐ Cancel paid-up share capital that is no longer represented by assets

(2 marks)

17.10 Which **TWO** of the following are true concerning the issuing of a solvency statement by private companies in connection with a reduction of the company's share capital?

- ☐ A solvency statement must be made 15 days in advance of the meeting where the special resolution concerning the reduction will be voted on
 - ☐ Only the Chairman and Finance Director of the company must be named on the statement
 - ☐ The statement must declare that there are no grounds to suspect the company will be unable to pay its debts for the next six months
 - ☐ It is an offence to make a solvency statement without reasonable grounds for the opinion expressed in it
- (2 marks)**

17.11 Which of the following statements concerning public companies reducing their share capital is correct?

- ☐ A public company can reduce its share capital to below £50,000 and remain a public company without restriction
 - ☐ A public company that wishes to reduce its share capital to below £50,000 must re-register as a private company
 - ☐ A public company that wishes to reduce its share capital to below £50,000 must obtain permission from the stock market
 - ☐ A public company that wishes to reduce its share capital to below £50,000 must pass a written resolution of the members
- (2 marks)**

17.12 What is the name given to dividends that are paid part of the way through a company's financial year?

- ☐ Semi-dividends
 - ☐ Part paid dividends
 - ☐ Interim dividends
 - ☐ Preference dividends
- (2 marks)**

17.13 In relation to the payment of dividends, which of the following will be included in the profit available for distribution in a company's current financial year?

- ☐ An increase in the asset value of a head office building that occurred during the current financial year
 - ☐ Profit on the sale of an asset sold after the end of the current financial year
 - ☐ A depreciation charge made in the current financial year
 - ☐ A premium received on the nominal value of shares issued in the current financial year
- (2 marks)**

17.14 Which of the following statements is true concerning the payment of dividends by a public company?

- ☐ A public company may make a distribution as long as its net assets are not less than its share capital
 - ☐ A public company may make a distribution as long as its net assets are not less than its undistributable reserves
 - ☐ A public company may make a distribution as long as its net assets are not less than its share capital less its undistributable reserves
 - ☐ A public company may make a distribution as long as its net assets are not less than its share capital plus its undistributable reserves
- (2 marks)**
-

17.15 Which **TWO** of the following statements concerning liability for the payment of unlawful dividends is correct?

- ☐ Directors are liable if they declare a dividend that they know to be paid out of capital
 - ☐ Members who did not know the payment was unlawful are not liable
 - ☐ Directors face criminal liability if they declare unlawful dividends
 - ☐ Directors who honestly rely on proper accounts when deciding whether to pay a dividend are still liable if it turns out to be unlawful
- (2 marks)**

(Total = 23 marks)

18 MTQ Bank 4

36 mins

- 18.1 Riz is considering incorporating a public limited company. He is keen to ensure that the company is funded correctly, but not excessively, and is aware that the Companies Act includes a number of rules concerning share capital.

He has been advised to consider the following terms in connection with share capital and is seeking your advice.

- (1) Issued share capital
 - (2) Paid-up share capital
 - (3) Called-up share capital
 - (4) Authorised share capital
- (a) Which of the following concerns the number of shares held by shareholders?
- ☐ Issued share capital
 - ☐ Paid-up share capital
 - ☐ Called-up share capital
 - ☐ Authorised share capital
- (2 marks)
- (b) Which concerns the amount of money a company has received for the shares held by shareholders?
- ☐ Issued share capital
 - ☐ Paid-up share capital
 - ☐ Called-up share capital
 - ☐ Authorised share capital
- (2 marks)
- (c) Which of the following correctly describes the minimum amount of paid up share capital that Riz's company must have?
- ☐ £12,500
 - ☐ £12,500 plus a quarter of any share premium
 - ☐ £12,500 plus the full amount of any share premium
 - ☐ £50,000
- (2 marks)
- (Total = 6 marks)**

- 18.2 Flop Co was in financial difficulties. In January, in order to raise capital, it issued 10,000 \$1 shares to Gus, but only asked him to pay 75 cents per share at the time of issue.

In June, the company realised that it needed even more money, and in order to persuade Gus to provide it, Flop Co told him that if he bought a further 10,000 shares he would only have to pay a total of 40 cents for each \$1 share.

Gus agreed to this, but the injection of cash did not save Flop Co and in December it went into insolvent liquidation, owing a considerable amount of money.

- (a) What is the general rule concerning the issuing of shares?
- ☐ Shares may be issued at a premium to their nominal value but not at a discount to it
 - ☐ Shares may be issued at a premium or discount to their nominal value
 - ☐ Shares must be issued at a discount to their nominal value
 - ☐ Shares may be issued at a discount but not at a premium to their nominal value
- (2 marks)
- (b) What is the extent of Gus's liability on the 10,000 \$1 shares that he paid 75 cents each for?
- ☐ Nothing
 - ☐ \$2,500 (the amount of Gus' unpaid share capital)
 - ☐ \$7,500 (the amount of share capital paid by Gus)
 - ☐ \$10,000 (the amount of share capital issued to Gus)
- (2 marks)

(c) What is the extent of Gus's liability on the further 10,000 \$1 shares that he paid 40 cents each for?

- ☐ Nothing
- ☐ \$4,000 (the amount Gus paid for the shares) plus interest
- ☐ \$6,000 (the amount unpaid on Gus' shares) plus interest
- ☐ \$6,000 (the amount unpaid on Gus' shares) only

(2 marks)

(Total = 6 marks)

18.3 In 20X5 two newspaper companies, Kudos Co and Lux Co, entered into an agreement in an attempt to safeguard their independent positions. Under the agreement, Kudos Co purchased 20% of Lux Co's preference shares which carry a preferred dividend of 10%.

The board of directors of Lux Co have recently become disenchanted with their link with Kudos Co and want encourage Kudos Co to sell its preference share in the company. To do this, the board of Lux Co proposes a resolution to reduce the dividend on all preference shares to 5%.

(a) Which **TWO** of the following are examples of class rights?

- ☐ The priority right to a dividend granted to preference shareholders
- ☐ The right to appoint directors granted to preference and ordinary shareholders
- ☐ The right to attend company meetings granted to ordinary shareholders but not preference shareholders
- ☐ The right to approve the appointment of auditors granted to all shareholders (2 marks)

(b) Which of the following correctly describes the percentage of members that are needed to apply to the court for a variation of class rights to be cancelled?

- ☐ 10% of members of the affected class
- ☐ 10% of all company members
- ☐ 15% of members of the affected class
- ☐ 15% of all company members

(2 marks)

(c) Can Kudos Co prevent the reduction of the preference dividend and why?

- ☐ No – because it does not have enough votes to block the resolution or apply to the court for the variation to be cancelled
- ☐ No – because it does not have enough votes to block the resolution and the court is unlikely to uphold a request from it to have the variation cancelled
- ☐ Yes – because it has enough votes to block the resolution
- ☐ Yes – because it can demonstrate the variation is not for the benefit of the company as a whole (2 marks)

(Total = 6 marks)

18.4 Milly Co has recently entered into the following arrangements with its creditors.

- (1) A single debenture of \$15,000 from B Bank that is secured by a charge over Milly Co's trade receivables. Milly Co may deal with the trade receivables as it wishes. The charge documentation describes the charge as a fixed charge. It was created on 15 May 20X1 and registered on 31 May 20X1.
 - (2) A single debenture of \$10,00 from C Bank that is secured by a fixed charge over Milly Co's office building. The charge was created on 20 May 20X1 and registered on 31 May 20X1.
 - (3) A single debenture of \$20,000 from Peppa Co secured on Milly Co's inventory. A floating charge was created on 3 March 20X1 and registered on 31 March 20X1.
 - (4) A single debenture of \$5,000 from Otto Co that is also secured on Milly Co's inventory. A floating charge was created on 10 April 20X1 and registered on 30 April 20X1.
 - (a) Which of the following statements concerning a register of debentureholders is correct?
 - ☐ Companies have no legal obligation to keep a register of debentureholders
 - ☐ Companies are legally required to keep a register of debentureholders for debentures issued as a series
 - ☐ Companies are legally required to keep a register of debentureholders for debentures issued as a series or as debenture stock
 - ☐ Companies are legally required to keep a register of debentureholders for any debentures that it has issued

(2 marks)
 - (b) In regards to the fixed charges, which of the following parties' charges has priority?
 - ☐ B Bank
 - ☐ C Bank

(2 marks)
 - (c) In regards to the floating charges, which of the following parties' charges has priority?
 - ☐ Peppa Co
 - ☐ Otto Co

(2 marks)
- (Total = 6 marks)**
-

18.5 Dee and Eff are major shareholders in, and the directors of, Fan Co. For the year ended 30 April 20X8 Fan Co's financial statements showed a loss of \$2,000 for the year and no profits were carried forward.

For the year ended 30 April 20X9 Fan Co made a profit of \$3,000. Also, due to a revaluation, the value of its land and buildings increased by \$5,000 and a premium of \$4,000 was received from a share issue.

As a consequence, Dee and Eff recommended, and the shareholders approved, the payment of \$4,000 in dividends.

- (a) What is the distributable profit of Fan Co for 20X9.
- ☐ \$Nil
 - ☐ \$3,000 (the company's profit for the year)
 - ☐ \$8,000 (the company's profit for the year plus increase in value of land and buildings)
 - ☐ \$12,000 (the company's profit for the year plus increase in value of land and buildings and share premium from share issue) **(2 marks)**
- (b) Which of the following statements correctly describes the liability of Dee and Eff if the dividend paid to them is made from undistributable reserves?
- ☐ No liability because as directors and shareholders, Dee and Eff are protected by the veil of incorporation
 - ☐ Liable only as directors for declaring unlawful dividends
 - ☐ Liable only as shareholders for knowingly receiving an unlawful dividend
 - ☐ Liable as directors for declaring unlawful dividends and as shareholders for knowingly receiving unlawful dividends **(2 marks)**
- (c) Which of the following is **NOT** exempt from the dividend payment rules?
- ☐ The issue of bonus shares
 - ☐ A reduction of share capital
 - ☐ Distributing assets upon a winding up
 - ☐ Paying out a cumulative dividend to preference shareholders **(2 marks)**

(Total = 6 marks)

(Total = 30 marks)

19 Company directors

28 mins

19.1 Which of the following types of director is expressly appointed as such?

- ☐ De jure
- ☐ De facto
- ☐ Shadow

(1 mark)

19.2 What is the minimum age that a director can be?

- ☐ 16
- ☐ 17
- ☐ 18

(1 mark)

19.3 How many directors are required to retire at the first annual general meeting of a public company?

- ☐ One-third of the directors
- ☐ Half the directors
- ☐ All of the directors

(1 mark)

19.4 Which of the following describes the actual authority of a Chief Executive Officer?

- ☐ The authority that the board expressly gives to them
- ☐ The authority that is usual for a Chief Executive Officer
- ☐ The authority that the Chief Executive Officer says to others they have

(1 mark)

19.5 The powers of a company's directors are defined in which company document?

- ☐ Articles of Association
- ☐ Memorandum of Association
- ☐ Register of Directors

(1 mark)

19.6 To which of the following does a director owe their statutory duties?

- ☐ The members personally
- ☐ The company as a whole
- ☐ The board of directors

(1 mark)

19.7 In which of the following circumstances will a director be personally liable for the debts of the company?

- ☐ Where the company's Articles of Association state that they are liable
- ☐ Where a creditor has told them they are liable
- ☐ Where they have breached their fiduciary duties

(1 mark)

19.8 Which of the following types of director is not validly appointed but is held out by the company to be a director?

- ☐ De jure director
- ☐ De facto director
- ☐ Shadow director
- ☐ Alternate director

(2 marks)

19.9 Which of the following is a characteristic of a non-executive director?

- ☐ They are individuals that are held out by the company to be directors
- ☐ They are not involved in the day-to-day running of the company
- ☐ They are individuals whose instructions concerning running the company are followed
- ☐ They are not subject to the statutory duties of directors

(2 marks)

19.10 Which **TWO** of the following are grounds that must be fulfilled in order for a court to be required to disqualify a director?

- ☐ Conviction of an indictable offence in connection with the management of a company
- ☐ Insolvency of a company that they are a director of
- ☐ Conduct making them unfit to be concerned in the management of a company
- ☐ Persistently failing to meet provisions of company legislation

(2 marks)

19.11 Which of the following resolutions is required to remove a director from office?

- ☐ Ordinary resolution
- ☐ Ordinary resolution with special notice
- ☐ Special resolution
- ☐ Special resolution with special notice

(2 marks)

19.12 Which of the following describes the correct way that directors should use their powers?

- ☐ For any reason necessary to maximise profit
- ☐ To achieve the goals of the business
- ☐ For a proper purpose that is honestly believed to be in the best interests of the company
- ☐ For any legal purpose

(2 marks)

19.13 Which of the following statements concerning a director that has acted outside their authority is correct?

- ☐ The company may not subsequently ratify their actions
- ☐ The members may ratify their actions but an ordinary resolution is required
- ☐ The members may ratify their actions but a special resolution is required
- ☐ The board of directors can ratify their actions on behalf of the members

(2 marks)

19.14 Which of the following statutory duties is a director meeting when they consider the long-term consequences of a decision on their employees?

- ☐ Act within powers
- ☐ Exercise independent judgement
- ☐ Avoid conflicts of interest
- ☐ Promote the success of the company

(2 marks)

19.15 Which **TWO** of the following describe the level of knowledge, skill and experience required by a director in order to meet their statutory duty to exercise reasonable, skill, care and diligence?

- ☐ The knowledge, skill and experience that the director actually has
- ☐ The knowledge, skill and experience expected of the director by the board of directors
- ☐ The knowledge, skill and experience that is reasonably expected of a person carrying out the functions of the director
- ☐ The knowledge, skill and experience that the members of the company believe the director to actually have

(2 marks)

(Total = 23 marks)

20 Other company officers

28 mins

20.1 Which of the following companies **MUST** have a company secretary?

- ☐ Private limited company
- ☐ Unlimited liability company
- ☐ Public limited company

(1 mark)

20.2 Which of the following parties associated with a company may **NOT** act as its company secretary?

- ☐ A company's sole director
- ☐ A company's accountant
- ☐ A company's solicitor

(1 mark)

20.3 Which of the following parties associated with a company appoints the company secretary?

- ☐ The members
- ☐ The directors
- ☐ The auditor

(1 mark)

20.4 Which of the following is eligible to act as a company's auditor?

- ☐ An employee of the company
- ☐ The partner of an employee of a company
- ☐ The accountancy firm responsible for producing the company's accounts

(1 mark)

20.5 Which of the following parties appoints the company's first ever auditors?

- ☐ The members
- ☐ The Registrar of Companies
- ☐ The directors

(1 mark)

20.6 Which of the following auditors are deemed automatically reappointed each year unless specific circumstances dictate otherwise?

- ☐ Auditors of public limited companies
- ☐ Auditors of private limited companies
- ☐ Auditors of quoted companies

(1 mark)

20.7 Which of the following is the statutory duty of an auditor?

- ☐ To report to the members that the accounts are accurate and free from error
- ☐ To report to the members that the accounts give a true and fair view and have been properly prepared in accordance with the Companies Act
- ☐ To report to the members that the accounts have been prepared in line with accounting standards

(1 mark)

20.8 Which of the following sets the specific duties expected of a company's secretary?

- ☐ The Articles of Association
- ☐ The Companies Act
- ☐ The Memorandum of Association
- ☐ The Board of Directors

(2 marks)

20.9 Which of the following contracts does a company secretary have the power to bind their company in?

- ☐ Purchase of inventory from a supplier
- ☐ Acquisition of a head office building
- ☐ Car hire for transporting customers to meetings with the directors
- ☐ A bank loan

(2 marks)

20.10 Which **TWO** of the following duties would a company secretary expect to perform?

- ☐ Establishing and maintaining the company's statutory registers
- ☐ Filing accurate returns with the Registrar of Companies.
- ☐ Hiring and firing directors
- ☐ Reviewing the work of the company auditor

(2 marks)

20.11 Which of the following is a permitted qualification for a company secretary of a public limited company?

- ☐ A business degree
- ☐ Employment as a plc's secretary for two out of five years preceding appointment
- ☐ Full membership of the ACCA
- ☐ A qualifying law degree

(2 marks)

20.12 Which of the following is a statutory right of a company auditor?

- ☐ To attend board meetings
- ☐ To vote in the company's general meetings
- ☐ To access, at all times, the books, accounts and vouchers of the company
- ☐ To appoint non-executive directors

(2 marks)

20.13 What type of company resolution is required to remove an auditor?

- ☐ Ordinary resolution
- ☐ Ordinary resolution with special notice
- ☐ Special resolution
- ☐ Special resolution with special notice

(2 marks)

20.14 Which of the following must an auditor of a non-quoted company provide if they are removed from office at a general meeting?

- ☐ A breakdown of their fees covering the period they acted as auditor
- ☐ A list of recommendations to the members on how company procedures may be improved
- ☐ A statement to members and creditors of whether there are circumstances that the auditor believes should be brought to their attention
- ☐ An opinion on the performance of the company directors

(2 marks)

20.15 Which **TWO** of the following are criteria that a private company must meet to be exempt from audit?

- ☐ Turnover less than £10.2 million
- ☐ Balance sheet total less than £5.1 million
- ☐ Average number of employees fewer than 30
- ☐ Total long-term debt less than £4.5 million

(2 marks)

(Total = 23 marks)

21 Company meetings and resolutions

28 mins

21.1 An annual general meeting must be held by which of the following companies?

- ☐ Public limited company
- ☐ Private limited company
- ☐ Company limited by guarantee

(1 mark)

21.2 Unless a shorter period is agreed by the members, how many days' notice must be given in respect of an annual general meeting?

- ☐ 14
- ☐ 21
- ☐ 28

(1 mark)

21.3 How many days' notice is required for a meeting at which a special resolution is to be voted on?

- ☐ 14
- ☐ 21
- ☐ 28

(1 mark)

21.4 As a minimum, what percentage of the votes is required to pass an ordinary resolution?

- ☐ 50%
- ☐ 51%
- ☐ 75%

(1 mark)

21.5 As a minimum, what percentage of the members can agree to a shorter notice period in respect of a general meeting?

- ☐ 51%
- ☐ 75%
- ☐ 90%

(1 mark)

21.6 What is the minimum percentage of the voting rights required by members to requisition a resolution at an annual general meeting?

- ☐ 5%
- ☐ 10%
- ☐ 15%

(1 mark)

21.7 On a vote on a show of hands, how many votes is each member granted?

- ☐ One
- ☐ One per share held
- ☐ As many votes as their shareholding entitles them to

(1 mark)

21.8 Which of the following is included in the ordinary business of an annual general meeting?

- ☐ Changing the company's name
- ☐ Reducing the company's share capital
- ☐ Approving the payment of dividends
- ☐ Appointing an administrator

(2 marks)

21.9 In a general meeting, which of the following items of business would require a special resolution?

- ☐ Appointing a director
- ☐ Removing an auditor
- ☐ Ratifying the ultra vires actions of a director
- ☐ Altering the Articles of Association

(2 marks)

21.10 Which **TWO** of the following are correct differences between ordinary and special resolutions?

- ☐ The text of a special resolution must be set out in full in the notice conveying the meeting. The text of an ordinary resolution does not need to be set out in full
- ☐ A special resolution requires 21 days' notice. An ordinary resolution requires 14 days' notice
- ☐ An ordinary resolution can be passed on a show of hands, but a special resolution requires a poll to be taken
- ☐ Copies of special resolutions must always be sent to the Registrar of Companies. Ordinary resolutions do not generally have to be sent to the Registrar

(2 marks)

21.11 Which type of resolution can **ONLY** be passed by a private company?

- ☐ Written resolution
- ☐ Ordinary resolution
- ☐ Special resolution
- ☐ Special resolution with special notice

(2 marks)

21.12 Which of the following may **NOT** be achieved by written resolution?

- ☐ Removal of an auditor
- ☐ Alteration of the company's articles
- ☐ Variation of class rights
- ☐ Change to the company's name

(2 marks)

21.13 How many days' notice is required for a meeting where a resolution requires special notice?

- ☐ 21
- ☐ 28
- ☐ 30
- ☐ 35

(2 marks)

21.14 Where members hold sufficient voting rights to requisition a resolution at a general meeting, how much notice in advance of the meeting must they give the company?

- ☐ One week
- ☐ Two weeks
- ☐ Four weeks
- ☐ Six weeks

(2 marks)

21.15 Which **TWO** of the following are rights of a proxy at a general meeting?

- ☐ To vote on a show of hands but not a poll
- ☐ To speak at the meeting
- ☐ To requisition a resolution at the meeting
- ☐ To demand a poll

(2 marks)

(Total = 23 marks)

22 MTQ Bank 5

36 mins

22.1 Caz is a director of Dull Inc, but she also carries out her own business as a wholesale supplier of specialist metals under the name of Era Co. Last year Dull Inc entered into a contract to buy a large consignment of metal from Era Co. Caz attended the board meeting that approved the contract and voted in favour of it, without revealing any link with Era Co.

(a) Which of the following describes a director's statutory duties?

- ☐ Duties created under common law principles of agency law
- ☐ Duties created by Parliament under the Companies Act
- ☐ Duties created under the terms of a director's service contract
- ☐ Duties created under the UK Corporate Governance Code

(2 marks)

(b) Identify whether Caz has breached any of these duties of a director.

	Breached	Not Breached
Promote the success of the company	<input type="radio"/>	<input type="radio"/>
Duty to exercise independent judgment	<input type="radio"/>	<input type="radio"/>
Declare interest in proposed transaction or arrangement	<input type="radio"/>	<input type="radio"/>
Declaration of interest in existing transaction or arrangement	<input type="radio"/>	<input type="radio"/>

(4 marks)

(Total = 6 marks)

22.2 Katch Co is a small private company. Although there are three members of its board of directors, the actual day-to-day running of the business is left to one of them, Len, who simply reports back to the board on the business he has transacted. Len refers to himself as the Chief Executive Officer of Katch Co, although he has never been officially appointed as such.

Six months ago Len entered into a contract on Katch Co's behalf with Mo to produce some advertising material for the company. However Katch Co did not wish to proceed with the advertising campaign and the board of directors has refused to pay Mo, claiming that Len did not have the necessary authority to enter into the contract with him.

(a) Which of the following describes a director's express authority?

- ☐ The authority granted to the director by the shareholders
- ☐ The authority granted to the director by the company secretary
- ☐ The authority granted to the director by the board of directors
- ☐ The authority granted to the director by the chief executive officer

(2 marks)

(b) Which of the following describes the extent of a chief executive officer's implied authority?

- ☐ To enter the company into administrative contracts only
- ☐ To enter the company into any administrative or commercial contract
- ☐ To enter the company into commercial contracts only
- ☐ To enter the company into contracts up to a maximum value that is set by the board

(2 marks)

(c) Is Mo entitled to payment from Katch Co in respect of the contract entered into by Len and why?

- ☐ No – Len did not have authority to enter into the contract
- ☐ No – Mo should have checked whether Len had authority before entering into the contract
- ☐ Yes – Len had express authority to enter into the contract
- ☐ Yes – Mo is entitled to assume that Len had implied authority to enter into the contract

(2 marks)

(Total = 6 marks)

- 22.3 Boo was recently disqualified from acting as a company director under the Company Directors Disqualification Act 1986. She decided to continue trading and arranged for her daughter, Mills, to form a new company, Purr Co.

On registration, Mills was appointed as a director, however, she would receive instruction on what to do from Boo's personal financial adviser, Beni, who is accustomed to act on Boo's orders. Beni was not appointed as a director but is identified as the company's managing director on all its official paperwork. Suki was also appointed as a director, but his role is limited to providing an independent view on how the company is being run.

- (a) Which of the following statements concerning company directors is correct?

- ☐ The minimum number of directors required by all companies is one
- ☐ A company may act as a director of another company
- ☐ The minimum age of a director is 18
- ☐ All companies must hold a meeting if they wish to remove a director

(2 marks)

- (b) Match the parties to the type of director they are.

	De jure director	De facto director	Shadow director	Non-executive director
Boo	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mills	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Beni	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Suki	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

(4 marks)

(Total = 6 marks)

-
- 22.4 Vic, an ACCA member, is the sole director of Envy Co, a wholesaler of books. Last year he employed Div, his solicitor, to act as Envy Co's company secretary. Vic believed that Div had all the necessary knowledge and experience needed to do the job. Whilst Vic was away on business, Div entered Envy Co into a contract with Green Co to buy a consignment of tablet computers that would be resold as electronic books. Vic was not happy about this and has decided to take action.

- (a) Which of the following statements concerning Div is correct?

- ☐ Div should have passed professional company secretary exams before acting as company secretary
- ☐ Div was free to act as company secretary as soon as he was appointed
- ☐ Div required authorisation from the Registrar of Companies before acting as company secretary
- ☐ Envy Co should have passed an ordinary resolution appointing Div as company secretary before he could act as such

(2 marks)

- (b) Is Envy Co bound by the contract to buy the tablet computers?

- ☐ Yes, a company secretary is free to make any contracts on behalf of the company
- ☐ Yes, in this case Div has implied authority to bind the company in this contract
- ☐ No, because the contract is commercial in nature
- ☐ No, because a company secretary has no authority to bind a company in any contract

(2 marks)

- (c) Is Vic is legally permitted to perform the role of company secretary of Envy Co?

- ☐ Yes, Vic is ACCA qualified and therefore may act as company secretary
- ☐ Yes, Vic is permitted by virtue of his position as company director to also act as company secretary
- ☐ No, a sole director may not act as company secretary
- ☐ No, only public companies are permitted to appoint company secretaries

(2 marks)

(Total = 6 marks)

22.5 Grave Inc's year end was on 31 December 20X7. Notice of its annual general meeting was sent to shareholders on 1 March 20X8 and it was to be held on 25 March 20X8. However, the date of the meeting was not convenient for 75% of the company's shareholders who decided that the meeting should be held on 10 March 20X8. The meeting took place on 10 March 20X8.

Later that year, the company's auditors decided to resign. They requested that a general meeting should be held so that they can inform the shareholders of the circumstances surrounding their resignation. The directors of Grave Inc are not keen for such a meeting to be held and are refusing to organise it.

- (a) Which **TWO** of the following are examples of the ordinary business dealt with at an annual general meeting?
- ☐ Appointment of the company secretary
 - ☐ Fixing the auditor's remuneration
 - ☐ Paying shareholders their dividends
 - ☐ Considering the directors' report
- (2 marks)**
- (b) Was Grave Inc's annual general meeting was called correctly and why?
- ☐ No – it was not called within the required time after the company's year end
 - ☐ No – insufficient notice was given to members
 - ☐ No – the meeting date should not have differed from the one stated in the official notice
 - ☐ Yes – all requirements for calling a meeting were correctly followed
- (2 marks)**
- (c) Are the directors of Grave Co required to hold the general meeting as requested by the auditors and why?
- ☐ Yes – auditors have authority in law to request a company holds a general meeting at any time
 - ☐ Yes – auditors have authority in law to request a general meeting to hear circumstances behind their resignation
 - ☐ No – the power to call general meetings is only granted to directors
 - ☐ No – auditors have authority to request a general meeting but directors have the power to ignore them if it is not in the interests of the company
- (2 marks)**
(Total = 6 marks)

(Total = 30 marks)

23 Insolvency and administration

28 mins

23.1 Which of the following parties applies for a company to be liquidated in a creditors' voluntary liquidation?

- ☐ The creditors
- ☐ The members
- ☐ The directors

(1 mark)

23.2 Which of the following determines whether a voluntary liquidation is a members' or creditors' voluntary liquidation?

- ☐ The solvency of the company
- ☐ A decision of the members
- ☐ A decision of the creditors

(1 mark)

23.3 Which of the following parties may apply to the court for the compulsory liquidation of a company?

- ☐ The company's auditor if they deem it necessary in the public interest
- ☐ A creditor who is owed more than £750 and who sent the company a written demand for it over three weeks ago and has not had a reply
- ☐ The Registrar of Companies if they have not received copies of the company's last three financial statements

(1 mark)

23.4 In which of the following situations will the court order the compulsory liquidation of a company on the just and equitable ground?

- ☐ Where 50% of the members disagree with the actions of the directors
- ☐ When the main object of the company cannot be achieved
- ☐ Where the company has failed to pay its creditors for three months

(1 mark)

23.5 Which of the following parties has their interest paid last out of a liquidated company's assets?

- ☐ Employees
- ☐ Unsecured creditors
- ☐ Members

(1 mark)

23.6 In the context of corporate insolvency, which of the following describes the purpose of an administration order?

- ☐ To allow the company to pay its debts before it is liquidated
- ☐ To prevent legal actions being taken against it
- ☐ To attempt to rescue the company as a going concern

(1 mark)

23.7 Which of the following parties may appoint an administrator without a court order?

- ☐ A floating chargeholder
- ☐ A fixed charge holder
- ☐ An unsecured creditor

(1 mark)

23.8 Which of the following names is given to the person in charge of the voluntary liquidation of a company?

- ☐ Receiver
- ☐ Chargee
- ☐ Liquidator
- ☐ Administrator

(2 marks)

23.9 At which point does a members' voluntary liquidation commence?

- ☐ As soon as the members pass the necessary resolution
- ☐ As soon as the Registrar receives a copy of the resolution to liquidate the company
- ☐ As soon as the liquidator is appointed
- ☐ As soon as the directors authorise it after the resolution to liquidate the company is passed

(2 marks)

23.10 Which **TWO** of the following resolutions may commence a creditors' voluntary liquidation of a company?

- ☐ A special resolution of the creditors
- ☐ A written resolution of the members with a 75% majority
- ☐ A resolution of the board of directors with a 75% majority
- ☐ A special resolution of the members

(2 marks)

23.11 Which of the following statements relates to a compulsory liquidation and which relates to a voluntary liquidation?

	Compulsory liquidation	Voluntary liquidation
An insolvency practitioner acts as liquidator	<input type="radio"/>	<input type="radio"/>
The liquidation process is controlled by the court	<input type="radio"/>	<input type="radio"/>

(2 marks)

23.12 Which of the following statements concerning a members' voluntary liquidation is correct?

- ☐ Creditors must approve the choice of liquidator
- ☐ The liquidator must hold an annual general meeting of the contributories
- ☐ The final act of the liquidator is to file the company's final accounts
- ☐ Notice of the liquidation must be published in *The Gazette*

(2 marks)

23.13 Which of the following parties has their interest paid first out of a liquidated company's assets?

- ☐ The liquidator
- ☐ Floating chargeholders
- ☐ Employees
- ☐ Those owed deferred debts

(2 marks)

23.14 Which of the following statements concerning administration is correct?

- ☐ A liquidation order may be granted against the company if the company is in administration
- ☐ To commence administration always requires a court order
- ☐ The official receiver is put in charge of a company subject to an administration order
- ☐ If the company cannot be rescued as a going concern, the next objective of administration is to achieve a better result for creditors than an immediate liquidation would

(2 marks)

23.15 Which **TWO** of the following will end an administration period?

- ☐ After 12 months have elapsed since the administration commenced
- ☐ The success of the administration
- ☐ A court order granted following a special resolution of the members
- ☐ Agreement of the creditors

(2 marks)

(Total = 23 marks)

24 MTQ Bank 6

36 mins

24.1 Jinx Co was formed by two brothers, Son and Lon, who are the company's only shareholders and directors. The company was very successful and has made good profits in every year of trading. However, recently the two brothers have fallen out over some matters in their personal lives and they are no longer talking to each other. This argument, and the resulting lack of trust between Son and Lon, has made running the company almost impossible and business is suffering a consequence. Son would like to have the company liquidated and is seeking advice.

(a) Which of the following parties instigates a creditors' voluntary liquidation?

- ☐ The directors
- ☐ The members
- ☐ The creditors
- ☐ The official receiver

(2 marks)

(b) In regards to Jinx Co, identify whether the following statements are true or false.

	True	False
Son will need the agreement of Lon to instigate a members' voluntary liquidation	<input type="radio"/>	<input type="radio"/>
Son will need the agreement of Lon to instigate a compulsory liquidation	<input type="radio"/>	<input type="radio"/>
A court is likely to order a just and equitable winding up of Jinx Co	<input type="radio"/>	<input type="radio"/>
An insolvency practitioner would oversee a compulsory liquidation of Jinx Co	<input type="radio"/>	<input type="radio"/>

(4 marks)

(Total = 6 marks)

24.2 Aspin is the Finance Director of Getz Co. The company has recently gone through a severe downturn in its business and has failed to pay some of its creditors. Aspin believes that Getz Co may be the subject of a compulsory liquidation order and seeks advice, he is particularly concerned about the effect of a compulsory liquidation on the following matters:

- (1) The sale of a company office building that is currently being advertised
- (2) A threatened legal action by one of Getz Co's suppliers against the company
- (3) The company's employees
- (4) A number of floating charges that are secured against company inventory

(a) Which **TWO** of the following are requirements for a successful application for a compulsory liquidation?

- ☐ A debt of £750 or more
- ☐ An oral or written demand for payment of the debt
- ☐ A period of at least two weeks following demand for payment
- ☐ Failure to pay the debt or offer reasonable security for it

(2 marks)

(b) Identify whether the following are correct consequences of a compulsory liquidation on Getz Co.

	Incorrect	Correct
The company will be unable to sell the office building once compulsory liquidation commences	<input type="radio"/>	<input type="radio"/>
The threatened legal action by the creditor can no longer proceed under any circumstances once compulsory liquidation starts	<input type="radio"/>	<input type="radio"/>
Unless the liquidator decides otherwise, the employees will be dismissed once compulsory liquidation starts	<input type="radio"/>	<input type="radio"/>
On commencement of the compulsory liquidation, the floating charges will crystallise	<input type="radio"/>	<input type="radio"/>

(4 marks)

(Total = 6 marks)

- 24.3 Lazy Days Co is a coach tour company. It recently leased a fleet of five brand new 'Executive style' coaches ahead of an anticipated increase in business. The coaches cost a total of \$20,000 a month to lease, and on top of this, the business also has to pay its overheads including staff costs – a total of \$15,000 per month. The increase in business did not materialise and Lazy Days is only generating \$28,000 of revenue per month. The coach trips are going out on average 50% full of passengers.

Noelle, the Finance Director is increasingly concerned about the situation and has called a meeting of the board of directors to discuss the matter and the possibility of putting the business into administration.

- (a) Which **TWO** of the following statements concerning administration orders are correct?

- ☐ Administration orders are granted by the Registrar of Companies
 - ☐ Administration orders put an insolvency practitioner in control of the company
 - ☐ Administration orders protect the company from its creditors whilst it is liquidated
 - ☐ Administration orders can be used to realise property in order to make a distribution to creditors
- (2 marks)

- (b) Identify which of the following documents Noelle would be required to submit in order to apply for an administration order for Lazy Days Co.

	Required	Not required
Notice in the prescribed form	<input type="radio"/>	<input type="radio"/>
Statement of insolvency	<input type="radio"/>	<input type="radio"/>
Statutory declaration	<input type="radio"/>	<input type="radio"/>
Latest set of financial statements	<input type="radio"/>	<input type="radio"/>

(2 marks)

- (c) Would an administration order be granted to Lazy Days Co and why?

- ☐ Yes – because the company is making a loss
 - ☐ No – because the company is insolvent
 - ☐ Yes – providing the company can increase its revenue above its costs
 - ☐ No – administration orders are only granted to plcs
- (2 marks)

(Total = 6 marks)

- 24.4 On the advice of his accountant, Mat registered a private limited company, Purge Co, to conduct his small manufacturing business. Unfortunately the business did not prove successful and Mat and the other shareholders have decided that it is better to liquidate the company rather than run up any more debts.

The company has assets totaling \$15,000 and has the following debts:

Unsecured debts to business creditors \$8,000

Wages to due to employees \$6,000

Cost of the liquidation \$5,000

Company dividend \$4,000 declared but not paid

- (a) Which type of insolvency procedure is most appropriate to Purge Co's situation?

- ☐ Compulsory liquidation
- ☐ Creditors' voluntary liquidation
- ☐ Members' voluntary liquidation
- ☐ Administration

(2 marks)

- (b) On liquidation, in which order will Purge Co's debts be repaid?

	1st	2nd	3rd	4th
Dividend	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs of liquidation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Business creditors	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Employee wages	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

(4 marks)

(Total = 6 marks)

- 24.5 Earl has been employed by Flash Co for the past 20 years. During that time he has also invested in the company in the form of shares and debentures. Earl owns 5,000 ordinary shares in Flash Co. The shares are of \$1 nominal value and are fully paid-up. The debentures, to the value of \$5,000, are secured by a fixed charge against the land on which Flash Co's factory is built.

In April it was announced that Flash Co was insolvent and owed considerable amounts of money to trade creditors. However, the employees did receive half their contracted wages. In Earl's case this amounted to \$2,000.

- (a) If Flash Co is liquidated, which type of creditor would Earl be in respect of the remaining half of his wages?

- ☐ Secured creditor
- ☐ Preferential creditor
- ☐ Unsecured creditor
- ☐ Deferred creditor

(2 marks)

- (b) If Flash Co is liquidated, how much of the company's debt will Earl be liable to repay?

- ☐ None
- ☐ \$5,000 (the shares only)
- ☐ \$10,000 (the debentures only)
- ☐ \$12,000 (the shares, debentures and his wages)

(2 marks)

- (c) Assuming no insolvency proceedings have commenced, which of the following statements is correct in regards to Earl's fixed charge over the land?

- ☐ Earl may appoint a receiver of the land and order its sale
- ☐ Earl can demand immediate repayment of what he is owed
- ☐ Earl may appoint an administrator of the company without reference to the court
- ☐ Earl may request the just and equitable winding-up of the company

(2 marks)

(Total = 6 marks)

(Total = 30 marks)

25 Fraudulent and criminal behaviour

28 mins

25.1 In relation to the law on insider dealing, which of the following parties would be categorised as an insider?

- ☐ A company's auditor
- ☐ A company's supplier
- ☐ A company's customer

(1 mark)

25.2 Market abuse is an offence under which form of law?

- ☐ Civil law only
- ☐ Criminal law only
- ☐ Civil and criminal law

(1 mark)

25.3 In a criminal case, which of the following parties could be offered a deferred prosecution agreement by the prosecution?

- ☐ An individual director
- ☐ An individual shareholder
- ☐ The company as a whole

(1 mark)

25.4 In the context of money laundering, the transfer of monies in order to disguise their source is known by which of the following names?

- ☐ Layering
- ☐ Integration
- ☐ Placement

(1 mark)

25.5 Which of the following statements in relation to the offence of bribery is correct?

- ☐ Bribery is a tort
- ☐ Bribery can only be committed in the UK
- ☐ It is an offence for a corporation to fail to prevent bribery

(1 mark)

25.6 Which of the following is an agreement between an organisation and the prosecution whereby the organisation admits wrongdoing but stops short of pleading guilty to the offence?

- ☐ Deferred prosecution agreement
- ☐ Suspended prosecution agreement
- ☐ Corporate prosecution agreement

(1 mark)

25.7 Directors found guilty of fraudulent trading under the Insolvency Act 1986 face which of the following penalties?

- ☐ Imprisonment
- ☐ Unlimited fine
- ☐ Make good the debts of the company

(1 mark)

25.8 Which of the following is a defence to a charge of insider dealing?

- ☐ The individual had no expectation of profit
- ☐ The individual had reasonable grounds to believe that the information was about to be published
- ☐ The individual had reasonable grounds to believe their action was in the public interest
- ☐ The individual was not seeking to profit from the transaction personally

(2 marks)

25.9 Which of the following is an example of market abuse?

- ☐ An employee who sells shares in their company at a profit
- ☐ A finance director who makes a deliberately deceptive profit forecast
- ☐ An individual who buys a company's shares on the advice of a broker
- ☐ Timing the sale of a company office building so that the sale proceeds are included in the accounts of the current financial year

(2 marks)

25.10 Match the statement to the money laundering process.

	Placement	Layering
The initial disposal of proceeds from criminal activity	<input type="radio"/>	<input type="radio"/>
The attempt to disguise the original source of criminal funds	<input type="radio"/>	<input type="radio"/>

(2 marks)

25.11 To whom should a person who suspects another of money laundering report their suspicions?

- ☐ National Crime Agency
- ☐ National Audit Office
- ☐ Companies House
- ☐ Financial Conduct Authority

(2 marks)

25.12 Identify whether the following are classed as bribery offences.

	Bribery offence	Not a bribery offence
Receiving reasonable corporate hospitality	<input type="radio"/>	<input type="radio"/>
Accepting an incentive to perform a function of a public nature	<input type="radio"/>	<input type="radio"/>

(2 marks)

25.13 The Criminal Finances Act 2017 makes 'relevant bodies' criminally liable if their staff or agents are involved in tax evasion.

Which **THREE** of the following must be proved for a 'relevant body' to be liable?

- ☐ The business was involved in criminal tax evasion
- ☐ The company's reasonable procedures to prevent tax evasion had failed
- ☐ A member of the company's staff or its agent facilitated the tax evasion
- ☐ The business failed to prevent the member of staff or agent from committing the offence
- ☐ The business is a private limited company or public limited company

(2 marks)

25.14 Which of the following statements relates to wrongful trading and which relates to fraudulent trading?

	Wrongful trading	Fraudulent trading
It must be proved that the defendant intended to commit this wrongdoing	<input type="radio"/>	<input type="radio"/>
Defendants who commit this wrongdoing have only committed a civil offence	<input type="radio"/>	<input type="radio"/>

(2 marks)

25.15 Which **TWO** of the following are offences connected with the insolvency of a company?

- ☐ Wrongful trading
- ☐ Market abuse
- ☐ Making a false declaration of solvency
- ☐ Bribery

(2 marks)

(Total = 23 marks)

26 MTQ Bank 7

36 mins

26.1 In January the board of directors of Huge Inc decided to make a takeover bid for Large Inc. After the decision was taken, but before it is announced, the following chain of events occurs:

- (1) Slye, a director of Huge Inc, buys shares in Large Inc.
 - (2) Slye tells his friend Mate about the likelihood of the takeover and Mate buys shares in Large Inc.
 - (3) At a dinner party Slye, without actually telling him about the takeover proposal, advises his brother Tim to buy shares in Large Inc and Tim does so.
- (a) Indicate whether any of the following parties have committed any offence in respect of insider dealing.

	Committed an offence	Has not committed an offence
Slye	<input type="radio"/>	<input type="radio"/>
Mate	<input type="radio"/>	<input type="radio"/>

(4 marks)

- (b) Which of the following statements regarding Tim is correct?
- ☐ Tim committed a criminal offence because he knows Slye is a director of Huge Inc
 - ☐ Tim committed a criminal offence because he has a family connection with Huge Inc
 - ☐ Tim did not commit a criminal offence because the advice he received from Slye was given in a social situation
 - ☐ Tim did not commit a criminal offence because the advice he was given was not precise or specific

(2 marks)

(Total = 6 marks)

26.2 Five years ago, Del and Rod formed a limited company, Trot Co. The pair were the company's only directors and shareholders. The company was initially profitable but started making losses in its third year. Rod thought that the business should be liquidated at this point but Del persuaded him that the business should continue. Del continued to run the company but Rod, although he retained his position as a director, decided to focus his attention on another business venture.

Trot Co continued to make substantial losses, but Del produced fake company accounts to hide the company's debts. Eventually the scale of the losses became too large to hide and the company went into liquidation.

- (a) Identify whether a company must be insolvent or in administration for the offence of fraudulent trading to be actionable under the Insolvency Act 1986 and Companies Act 2006.

	Insolvency or administration required	Insolvency or administration not required
Insolvency Act 1986	<input type="radio"/>	<input type="radio"/>
Companies Act 2006	<input type="radio"/>	<input type="radio"/>

(2 marks)

- (b) Identify whether Del and Rod have committed the following offences.

	Fraudulent trading under s 213 Insolvency Act 1986	Wrongful trading under s 214 Insolvency Act 1986
Del	<input type="radio"/>	<input type="radio"/>
Rod	<input type="radio"/>	<input type="radio"/>

(4 marks)

(Total = 6 marks)



26.3 Ian is an accountant, and one of his clients is Jet, who runs an illegal operation as well as some other legitimate businesses. Jet approached Ian for advice as to how he should deal with the gains he makes from the illegal operation. Ian suggested that, rather than try to use his existing legitimate businesses to disguise the source of the money, Jet should use his legally made money to buy the local football club, Kickers, with the intention of passing his gains from the illegal operation through the club's accounts.

Jet accepted the proposal and appointed Ian as Kickers' finance director and together they passed the illegal money through the football club.

(a) Which **TWO** of the following statements concerning the offence of money laundering are correct?

- ☐ The offence of money laundering applies where funds have been obtained through any criminal activity
- ☐ The offence of money laundering only applies to certain business sectors
- ☐ The offence of money laundering applies where the source of illegitimate funds are disguised
- ☐ The offence of money laundering only applies to funds over a fixed amount **(2 marks)**

(b) Which money laundering offences have Ian and Jet committed?

	No offence committed	Money laundering	Failure to report	Tipping off
Ian	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Jet	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

(4 marks)
(Total = 6 marks)

26.4 Sid is a director of two listed public companies in which he has substantial shareholdings: Trend Inc and Umber Inc.

The annual reports of both Trend Inc and Umber Inc have just been drawn up, although not yet disclosed. They show that Trend Inc has made a surprisingly big loss and that Umber Inc has made an equally surprising big profit. On the basis of this information Sid sold his shares in Trend Inc and bought shares in Umber Inc. He also advised his brother to buy shares in Umber Inc.

Vic, who is also a shareholder in both companies, sold a significant number of shares in Umber Inc only the day before its annual report was published.

(a) Which of the following statements concerning Vic is correct?

- ☐ Vic is the victim of fraud and can claim for the profit he missed out on by selling his shares
- ☐ Vic is a victim of money laundering and can claim for the profit he missed out on by selling his shares
- ☐ Vic is a victim of insider dealing and can claim for the profit he missed out on by selling his shares
- ☐ Vic is not the victim of any criminal offence and cannot claim for the profit he missed out on by selling his shares **(2 marks)**

(b) Identify whether Sid committed any of the following criminal offences.

	Offence committed	Offence not committed
Market abuse – misuse of information	<input type="radio"/>	<input type="radio"/>
Market abuse – market distortion	<input type="radio"/>	<input type="radio"/>
Insider dealing – insider dealing	<input type="radio"/>	<input type="radio"/>
Insider dealing – encouraging another to deal	<input type="radio"/>	<input type="radio"/>

(4 marks)
(Total = 6 marks)

- 26.5 Greg and Helen are members of the board of directors of Huge Inc. Greg also controls a private limited company, Imp Co, through which he operates a management consultancy business. He also owns all the shares in Jet Co through which he conducts an investment business.

When Greg learns that Huge Inc is going to make a take-over bid for Kop Inc he arranges for Jet Co to buy a large number of shares in Kop Inc on the London Stock Exchange on which it makes a large profit when it sells them after the takeover bid is announced. He then arranges for Jet Co to transfer the profit to Imp Co as the charge for supposed consultancy work. The money is then transferred to Greg through the declaration of dividends by Imp Co.

Helen learns of Greg's actions and tells him that she will be reporting him to the authorities because she believes that he is guilty of money laundering. However she has decided not to report him for the insider dealing offence.

- (a) Dealing in which of the following securities is covered by insider dealing legislation?

- ☐ Shares and associated derivatives, debt securities and warranties
- ☐ Shares and associated derivatives only
- ☐ Shares and associated derivatives and debt securities only
- ☐ Debt securities and warranties only

(2 marks)

- (b) Indicate whether the following parties have committed an offence in respect of insider dealing and money laundering.

	Committed an insider dealing offence	Committed a money laundering offence	Both
Greg	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Helen	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

(4 marks)

(Total = 6 marks)

(Total = 30 marks)

27 Mixed Global Law Questions 1

33 mins

27.1 What is the role of the law in a democratic political system?

- ☐ To ensure that the state controls economic resources
- ☐ To ensure that individual behaviour is controlled by the state
- ☐ To ensure that individuals and groups relate to each other in predictable ways
- ☐ To ensure that problems between individuals and groups are sorted out as they arise (2 marks)

27.2 Which of the following statements in relation to the application and scope of the UN Convention on Contracts for the International Sale of Goods (UNCISG) is correct?

- ☐ The UNCISG covers the seller's liability for death or personal injury caused by the goods to any person
- ☐ The nationalities of the parties are taken into account when determining whether the UNCISG applies
- ☐ If the parties did not know that their places of business were in different states when the contract was concluded then the UNCISG does not apply
- ☐ Agreed customs between the parties are ignored if the contract is covered by the UNCISG (2 marks)

27.3 In Todland all decisions and choices about resource allocation are made by the country's government.

Which type of economy does Todland have?

- ☐ A market economy
- ☐ A mixed economy
- ☐ A planned economy
- ☐ A free economy (2 marks)

27.4 Which of the following sales does the UN Convention on Contracts for the International Sale of Goods (UNCISG) **NOT** apply to?

- ☐ A sale of shares to a stockbroker
- ☐ A sale of school uniforms to a shop
- ☐ A sale of cosmetics to a shop (1 mark)

27.5 If a party to an international sale of goods has more than one place of business in different states, which of the following is the relevant place of business for the contract?

- ☐ The one where the contract was signed
- ☐ The one most closely connected to the contract and its performance
- ☐ The one where the other party is sited
- ☐ The party's habitual residence (2 marks)

27.6 Separation of powers is a feature of many political systems.

Which parties' powers are said to be separated?

- ☐ The head of state and the head of the judiciary
- ☐ The judiciary, the executive and the legislature
- ☐ The head of the executive and the head of the legislature
- ☐ The police and the judiciary (2 marks)

27.7 Which type of legal system does the UK have?

- ☐ A civil law system
- ☐ A common law system
- ☐ A Sharia law system (1 mark)

27.8 Which of the following is **NOT** a way in which an offer under the UN Convention on Contracts for the International Sale of Goods (UNCISG) comes to an end?

- ☐ Acceptance
- ☐ Withdrawal
- ☐ Rejection
- ☐ Revocation

(2 marks)

27.9 Which of the following was **NOT** produced by UNCITRAL?

- ☐ Model Law on Cross-border Insolvency
- ☐ Model Law on International Commercial Arbitration
- ☐ Convention on International Service Contracts
- ☐ Convention on Contracts for the International Sale of Goods

(2 marks)

27.10 The rules on international credit transfers set out by UNCITRAL take which of the following forms?

- ☐ National laws
- ☐ A model law
- ☐ A convention
- ☐ A code of practice

(2 marks)

27.11 The Dispute Settlement Body (DSB) offers a procedure for settling trade disputes between countries through consultation.

Which international organisation is the DSB part of?

- ☐ The United Nations
- ☐ The European Union
- ☐ The International Chamber of Commerce
- ☐ The World Trade Organization

(2 marks)

27.12 Under the UNCITRAL Model Law on International Credit Transfers, which of the following is the obligation of the sender of a payment order?

- ☐ To pay the receiving bank for the payment order when the receiving bank accepts it
- ☐ To authenticate the payment order when requested by the sending bank
- ☐ To pay the sending bank for the payment order when the receiving bank accepts it
- ☐ To authenticate the payment order when requested by the receiving bank

(2 marks)

27.13 What is a statement of assent from an offeree which contains modifications to the terms of the offer known as?

- ☐ A revocation of the offer
- ☐ A withdrawal of the offer
- ☐ An acceptance of the offer
- ☐ A counter-offer

(2 marks)

27.14 Under the UNCITRAL Model Law on International Credit Transfers, at which point does the sender make payment to the receiving bank?

- ☐ When the receiving bank credits the sender's account which it holds
- ☐ When the receiving bank debits the sender's account which it holds
- ☐ When the sender hands over the relevant amount of cash
- ☐ When the sender hands over a cheque for the relevant amount

(2 marks)

27.15 Under the UN Convention on international bills of exchange and Promissory Notes, if an international bill of exchange is dishonoured for non-acceptance, which of the following parties does the bill's holder **NOT** have an immediate right of recourse against?

- ☐ Against the drawee
- ☐ Against the endorser
- ☐ Against the guarantor

(1 mark)

(Total = 27 marks)

28 Mixed Global Law Questions 2

32 mins

28.1 Lydia purchases unidentified goods from Ide and agrees that Ide should arrange carriage.

What must Ide do when the goods are ready for dispatch?

- ☐ Send Lydia a notice of consignment, specifying the goods
- ☐ Arrange for carriage and insurance to Lydia's place of business
- ☐ Place the goods at Lydia's disposal where the specific stock was located when the contract was concluded
- ☐ Arrange for delivery to Lydia within ten days

(2 marks)

28.2 Osbert has indicated his assent orally to Patricia regarding her written offer to buy goods from him under the UN Convention on Contracts for the International Sale of Goods (UNCISG).

In relation to this purported acceptance, which of the following statements is correct?

- ☐ It is an effective acceptance in all circumstances
- ☐ It may not be an effective acceptance if it reached Patricia after a reasonable time had elapsed
- ☐ It is not an effective acceptance until written confirmation is delivered to Patricia
- ☐ It is not an effective acceptance if it reached Patricia before the expiry of a fixed timescale

(2 marks)

28.3 What is the combination of a country's written constitution and national rules of law known as?

- ☐ National law
- ☐ Positive law
- ☐ International law
- ☐ Negative law

(2 marks)

28.4 Under the UN Convention on Contracts for the International Sale of Goods (UNCISG), once formed, how can a contract be modified?

- ☐ By the buyer
- ☐ By the seller
- ☐ By agreement between the parties

(1 mark)

28.5 A problem can occur when people in different sovereign states with different legal rules trade with each other.

What is this problem known as?

- ☐ Conflict of laws
- ☐ Rule of law
- ☐ International law
- ☐ National law

(2 marks)

28.6 Which of the following bodies develops and promotes Incoterms?

- ☐ UNCITRAL
- ☐ UNIDROIT
- ☐ WTO
- ☐ ICC

(2 marks)

28.7 Under the UN Convention on Contracts for the International Sale of Goods (UNCISG), if an offeree wishes to withdraw acceptance when must the withdrawal reach the offeror?

- ☐ Within a reasonable time
- ☐ Within a fixed time fixed by the contract
- ☐ Before or at the same time as the acceptance would have become effective

(1 mark)

28.8 The only term as to delivery date or time in a contract between Arch and Peligo dated 1 March is that Peligo should deliver to Arch on or before 31 May.

In relation to this, which of the following statements is true?

- ☐ Arch may require that delivery should be made earlier than 31 May
- ☐ Peligo may deliver at any time up until 31 May
- ☐ Peligo must deliver within a reasonable time of 1 March
- ☐ Arch may require that delivery should be made on 31 May

(2 marks)

28.9 Which of the following is the key source of law in France?

- ☐ Statute
- ☐ Custom
- ☐ Administrative regulations

(1 mark)

28.10 Which of the following can be binding under international law?

- ☐ An Act of Parliament
- ☐ The Sunnah
- ☐ A UN Model Law
- ☐ A UN Convention

(2 marks)

28.11 Which ICC Incoterm places the fewest obligations on the seller in regards to carrying and insuring goods?

- ☐ DDP
- ☐ CIF
- ☐ FOB
- ☐ EXW

(2 marks)

28.12 Which of the following is the most secure form of letter of credit for a seller?

- ☐ A confirmed letter of credit
- ☐ An irrevocable letter of credit
- ☐ A standby letter of credit
- ☐ A revolving letter of credit

(2 marks)

28.13 Which of the following issues are dealt with by using ICC Incoterms in contracts for the international sale of goods?

- ☐ Rules on instalment contracts
- ☐ Rules on paying customs duties
- ☐ Rules on paying the contract price

(1 mark)

28.14 What is an acknowledgement by a parent company of a subsidiary's indebtedness known as?

- ☐ Letter of credit
- ☐ Letter of comfort
- ☐ Bill of exchange
- ☐ Bill of lading

(2 marks)

28.15 A buyer and a seller have not agreed where goods are to be delivered. The contract does not involve carriage and the goods are unidentified.

In this case, when does the seller discharge their obligation to make delivery?

- ☐ When they place the goods at the buyer's disposal at the seller's place of business when the contract was concluded
- ☐ When they hand over the goods to the first carrier
- ☐ When they hand over the goods to the buyer at the seller's place of business when the contract was concluded
- ☐ When they place the goods at the buyer's disposal at the buyer's place of business when the contract was concluded

(2 marks)

(Total = 26 marks)

29 Mixed Global Law Questions 3

35 mins

29.1 Under the UN Convention on Contracts for the International Sale of Goods, goods do not have to comply with rules and regulations in the buyer's state unless one of a number of exceptions applies.

Which of the following is **NOT** an exception to the rule?

- ☐ The same rules apply in the seller's state
- ☐ The seller knew of the rules due to special circumstances
- ☐ The buyer told the seller of the rules and then relied on the seller's expert knowledge
- ☐ There is evidence that the seller should have known about the rules when the contract was formed

(2 marks)

29.2 Which of the following is the name given to the part of a state's political system that determines what laws should be passed?

- ☐ Executive
- ☐ Judiciary
- ☐ Legislature
- ☐ Council

(2 marks)

29.3 Which of the following ICC Incoterms applies to any form of transport?

- ☐ FOB
- ☐ CFR
- ☐ CIF
- ☐ DAT

(2 marks)

29.4 Which of the following is a valid exemption for a seller being liable for breach of contract?

- ☐ Unexpected circumstances made performance more expensive than agreed
- ☐ Unexpected circumstances made performance more difficult than agreed
- ☐ Unexpected circumstances required a change in delivery method
- ☐ Unexpected circumstances preventing performance could not be avoided or overcome

(2 marks)

29.5 What is the name given to the party in a civil law case who is the injured party that is seeking a remedy?

- ☐ The claimant
- ☐ The prosecution
- ☐ The accused
- ☐ The defendant

(2 marks)

29.6 Which of the following ICC Incoterms applies only to contracts involving marine transport?

- ☐ DAP
- ☐ FCA
- ☐ FAS
- ☐ DDP

(2 marks)

29.7 Which of the following sales does the UN Convention on Contracts for the International Sale of Goods **NOT** apply to?

- ☐ A sale of cosmetics to a pharmacy
- ☐ A sale of school uniforms to a shop
- ☐ A sale of shares to a stockbroker

(1 mark)

29.8 Which **TWO** of the following parties are involved in an international bank transfer?

- ☐ Originator
- ☐ Payee
- ☐ Drawee
- ☐ Beneficiary

(2 marks)

29.9 In relation to an international bill of exchange that has been dishonoured, which of the following statements are true or false?

- | | True | False |
|---|-----------------------|-----------------------|
| The holder can seek payment of the bill from the parties liable on it in any order they see fit | <input type="radio"/> | <input type="radio"/> |
| A person who fails to give notice of dishonour as required to parties who are entitled to receive it shall pay interest on the amount of the bill | <input type="radio"/> | <input type="radio"/> |

(2 marks)

29.10 A bill of lading is a document used in the transport of goods that performs a number of roles.

Which is **NOT** a role of a bill of lading?

- ☐ Provides evidence that the goods have been received by the carrier
- ☐ Provides evidence that Incoterms have been complied with
- ☐ Provides evidence of or contains the contract of carriage
- ☐ Acts as a document of title to the goods being shipped

(2 marks)

29.11 Under the UN Convention on International Bills of Exchange and Promissory Notes, an international bill of exchange must comply with which **TWO** of the following requirements?

- ☐ It must be an unconditional order
- ☐ It must be dated
- ☐ It must be for a sum of money to be determined
- ☐ It must be payable on demand

(2 marks)

29.12 Under the UNCITRAL Model Law on International Commercial Arbitration, both the claimant and defendant must produce statements that set out their case.

Which of the following statements regarding the failure of the defendant to produce a statement of defence is correct?

- ☐ Proceedings are terminated and a decision is made in favour of the claimant.
- ☐ Proceedings continue but the arbitral tribunal should take the failure to submit the statement of defence as an admission of guilt.
- ☐ Proceedings continue but the arbitral tribunal should not take the failure to submit the statement of defence as an admission of guilt.
- ☐ Proceedings are terminated and new proceedings are started to hear the case again.

(2 marks)

29.13 What is a letter, issued by a parent company to a potential creditor of one of its subsidiaries that acknowledges the parent company's approval of the subsidiary's attempt to raise finance, known as?

- ☐ Letter of credit
- ☐ Letter of comfort
- ☐ Letter of support
- ☐ Letter of endorsement

(2 marks)

29.14 Granco has indicated his assent orally to Nelly regarding her written offer to buy goods from him under the UN Convention on Contracts for the International Sale of Goods.

In relation to this purported acceptance, which of the following statements is correct?

- ☐ It is an effective acceptance in all circumstances
- ☐ It may not be an effective acceptance if it reached Nelly after a reasonable time had elapsed
- ☐ It is not an effective acceptance until written confirmation is delivered to Nelly
- ☐ It is not an effective acceptance if it reached Nelly before the expiry of a fixed timescale

(2 marks)

29.15 ICC Incoterms imply terms into contracts for the international sale of goods.

Which of the following terms are implied into contracts by Incoterms?

- ☐ Quality of the goods
- ☐ Quantity of the goods
- ☐ Passage of risk
- ☐ Termination of contract

(2 marks)

(Total = 29 marks)

30 Mixed Questions 1 (Specimen exam)

28 mins

30.1 In the context of the English legal system, which of the following defines the ratio decidendi of a judgment?

- ☐ The decision in a previous case
- ☐ The facts of the case
- ☐ The legal reason for deciding the case
- ☐ The future application of the case

(2 marks)

30.2 Chad has entered into a contract to supply Das with particular goods. They have agreed that the contract be on the basis of ICC Incoterms and in particular the FOB term.

In a FOB contract the **SELLER** is responsible for which of the following?

- ☐ Shipping of the merchandise
- ☐ Arranging insurance after loading to the carrier
- ☐ Arranging for an export licence if required
- ☐ Arranging for an import licence if required

(2 marks)

30.3 Which of the following statements in relation to the issuing of bills of lading is true?

- ☐ Risk remains with the seller
- ☐ Risk passes to the shipper
- ☐ Risk passes to the carrier
- ☐ Risk passes to the buyer

(2 marks)

30.4 Which of the following business forms does the use of the abbreviation 'Ltd' after the name of a business indicate?

- ☐ A limited partnership
- ☐ A limited liability partnership
- ☐ A private limited company

(1 mark)

30.5 When must an international bill of exchange payable on demand be presented for payment?

- ☐ Within one year of its date of issue
- ☐ Within three years of issue
- ☐ At any time after issue

(1 mark)

30.6 A written ordinary resolution requires the approval of which of the following?

- ☐ More than 50% of those actually voting
- ☐ More than 50% of those entitled to vote
- ☐ Unanimous approval of those entitled to vote

(1 mark)

30.7 Which of the following is **NOT** a form of alternative dispute resolution?

- ☐ Conciliation
- ☐ Harmonisation
- ☐ Mediation

(1 mark)

30.8 Which **TWO** of the following are recognised mechanisms for international payment?

- ☐ A bill of lading
- ☐ A bill of exchange
- ☐ A letter of credit
- ☐ A letter of comfort

(2 marks)

30.9 Which of the following does **NOT** necessarily lead to the termination of an offer under the UN Convention on Contracts for the International Sale of Goods?

- ☐ Withdrawal
- ☐ Revocation
- ☐ Rejection
- ☐ Modification

(2 marks)

30.10 It is not unusual for some company investments to carry cumulative dividend rights.

Which of the following statements about the declaration of cumulative dividends is correct?

- ☐ They are not paid until profits reach a certain percentage
- ☐ They are paid in the form of a bonus issue
- ☐ They are paid out of capital
- ☐ They are paid when profits are available for that purpose

(2 marks)

30.11 Under the UN Convention on Contracts for the International Sale of Goods, a written **ACCEPTANCE** of an offer takes place under which of the following circumstances?

- ☐ When it is properly posted
- ☐ When it reaches the offeror within a reasonable time
- ☐ When the offeror acknowledges receipt of the written acceptance

(1 mark)

30.12 Which of the following is the primary source of law in a civil law system?

- ☐ Courts
- ☐ Codes
- ☐ Customs

(1 mark)

30.13 In the context of Sharia law, which of the following is the fundamental source of law?

- ☐ Quran
- ☐ Fiqh
- ☐ Court judgments
- ☐ Hadith

(2 marks)

30.14 Ari was successful in an international arbitration against Bo. The action was heard in Bo's country but Ari is concerned that he will not be able to enforce the award in his domestic courts.

Which of the following does **NOT** provide a ground for a court to refuse to enforce an arbitration agreement under Article 36 of the UNCITRAL Model Law on Arbitration?

- ☐ The arbitration agreement expressly provided that no appeal could be made to a court
- ☐ The arbitration agreement was not valid under the law of the country under which it was decided
- ☐ The dispute cannot be decided under the law of country required to enforce the award
- ☐ Enforcement would be contrary to public policy of the country required to enforce the award

(2 marks)

30.15 ICC Incoterms establish risk and responsibilities in relation to international contracts.

Which of the following is the **BUYER** responsible for in a CIF contract?

- ☐ Arranging insurance after loading to the carrier
- ☐ Arranging for an export licence if required
- ☐ Arranging for an import licence if required

(1 mark)

(Total = 23 marks)

31 Mixed Questions 2 (Specimen exam)

30 mins

31.1 The term insider dealing relates to a number of potential criminal offences.

Which **TWO** of the following are crimes in relation to insider dealing?

- ☐ Encouraging someone to engage in insider dealing
- ☐ Failing to report insider dealing
- ☐ Concealing insider dealing
- ☐ Passing on inside information

(2 marks)

31.2 Which **TWO** statements are correct in relation to designated members in limited liability partnerships (LLPs)?

- ☐ They must not take part in the day-to-day operation of the business
- ☐ They are responsible for filing the LLP's accounts
- ☐ They are fully liable for partnership debts
- ☐ They have limited liability

(2 marks)

31.3 Mo has a significant holding in the shares of Nova Co. He wishes to use his shareholding to remove Owen from the board of directors but is not sure how to do so.

Which of the following must be used to remove a director from office?

- ☐ An ordinary resolution
- ☐ An ordinary resolution with special notice
- ☐ A special resolution
- ☐ A written resolution

(2 marks)

31.4 Which of the following can be accepted so as to form a binding contract?

- ☐ A statement of intent
- ☐ A quotation of price
- ☐ An agreement to enter into a future contract

(1 mark)

31.5 Under the UN Convention on Contracts for the International Sale of Goods, some offers are held to be irrevocable.

Which **TWO** of the following statements apply to an irrevocable offer?

- ☐ They may be revoked as long as this is done at the same time as the offer reaches the offeree
- ☐ They may never be revoked
- ☐ They may be withdrawn as long as this is done at the same time as the offer reaches the offeree
- ☐ They may never be withdrawn

(2 marks)

31.6 Which of the following is indicated by the abbreviation 'Ltd' at the end of a company's name?

- ☐ The shares are not transferable
- ☐ The shares may not be offered to the public
- ☐ The shares are freely transferable on the stock exchange

(1 mark)

31.7 Money laundering involves a number of phases in the overall procedure.

Which **TWO** of the following are recognised phases in money laundering?

- ☐ Relocation
- ☐ Layering
- ☐ Integration
- ☐ Distribution

(2 marks)

31.8 Under the UN Convention on Contracts for the International Sale of Goods, in relation to a contract involving the carriage of specific goods, risk normally passes from the seller to the buyer at which of the following times?

- ☐ When the goods leave the seller's premises
- ☐ When the goods are transferred to the first carrier
- ☐ When the goods arrive at their designated destination

(1 mark)

31.9 Which of the following functions is **NOT** performed by the World Trade Organization?

- ☐ It settles disputes between individuals
- ☐ It settles disputes between member states
- ☐ It administers trade agreements
- ☐ It reviews national trade policies

(2 marks)

31.10 Which of the following statements in relation to offers under the UN Convention on Contracts for the International Sale of Goods is true?

- ☐ They may be made to the world at large
- ☐ They must be evidenced in writing
- ☐ They are effective when they reach the offeree

(1 mark)

31.11 There are a number of ways in which investors can take an interest in a company and such different interests have different rights attached to them.

Which of the following **NORMALLY** participate in surplus capital?

- ☐ Preference shares
- ☐ Ordinary shares
- ☐ Debentures secured by a fixed charge
- ☐ Debentures secured by a floating charge

(2 marks)

31.12 Which of the following is **NOT** an actual type of letter of credit?

- ☐ Endorsed letter of credit
- ☐ Revocable letter of credit
- ☐ Standby letter of credit
- ☐ Revolving letter of credit

(2 marks)

31.13 Which **TWO** of the following statements in relation to a written acceptance of an offer are true under the UN Convention on Contracts for the International Sale of Goods?

- ☐ It may not normally be withdrawn once it is posted
- ☐ It may not normally be withdrawn after the offer reaches the offeree
- ☐ It may be withdrawn before the offer reaches the offeree
- ☐ It may be withdrawn at the same time as the offer reaches the offeree

(2 marks)

31.14 Letters of credit are ways of transferring payment internationally through the banking system.

In this context of international payments, which of the following statements is correct?

- ☐ The issuing bank represents the seller
- ☐ The advising bank represents the buyer
- ☐ The issuing bank represents the buyer

(1 mark)

31.15 Section 122 of the UK Insolvency Act 1986 provides a number of distinct grounds for applying to have a company liquidated on a compulsory basis.

Which of the following is **NOT** a ground for the compulsory liquidation of a company under that provision?

- ☐ The company has not received a trading certificate within its first 12 months
- ☐ The company has not started trading within the first 12 months
- ☐ The company has suspended its business for 12 months
- ☐ The company has altered its primary business within the first 12 months

(2 marks)

(Total = 25 marks)

32 Mixed Questions 3 (Specimen exam)

27 mins

32.1 Which of the following ensures that credit is always open between a buyer and a seller?

- ☐ Confirmed letter of credit
- ☐ Standby letter of credit
- ☐ Revolving letter of credit

(1 mark)

32.2 Which of the following attributes is **NOT** central to a civil law system?

- ☐ Codification
- ☐ Creativity
- ☐ Certainty
- ☐ Comprehensibility

(2 marks)

32.3 Under Article 35 of the UN Convention on Contracts for the International Sale of Goods the seller must supply goods of a quality that is fit for purpose.

Which of the following is **NOT** included in Article 35 requirements as to quality?

- ☐ Fit for the purpose for which such goods are normally used
- ☐ Fit for unusual use not known by the seller
- ☐ Fit for unusual use as suggested by a sample of the product
- ☐ Packaged adequately so as to protect the goods

(2 marks)

32.4 Ho subscribed for some partly paid up shares in Io Co. The company has not been successful and Ho has been told that when Io Co is liquidated, he will have to pay the amount remaining unpaid on his shares. However, he is not sure to whom such payment should be made.

In limited liability companies, shareholders are liable to which party for any unpaid capital?

- ☐ Creditors
- ☐ The directors
- ☐ The company
- ☐ The liquidator

(2 marks)

32.5 Which of the following parties normally issues a letter of comfort?

- ☐ A company in financial difficulty
- ☐ The parent company of a company in financial difficulty
- ☐ The bank of a company in financial difficulty

(1 mark)

32.6 Dan has been accused of a criminal offence and is due to be tried soon. He denies responsibility, claiming that the prosecution has no evidence that he committed the offence in question.

In the context of the English legal system, which of the following describes the standard of proof in a criminal case?

- ☐ On the balance of probability
- ☐ On the balance of certainty
- ☐ Beyond reasonable doubt
- ☐ Beyond evident doubt

(2 marks)

32.7 Which of the following statements relating to limited liability partnerships is correct?

- ☐ They are limited to a maximum of 20 members
- ☐ They must have a minimum of two members
- ☐ They must have at least one unlimited member

(1 mark)

32.8 In the context of the law of agency, an agent will **NOT** be liable for a contract in which of the following instances?

- ☐ Where the agent fails to disclose that they are acting as such
- ☐ Where the agent intends to take the benefit of the contract and does not disclose they are acting as an agent
- ☐ Where the agent acts on their own behalf although claiming to be an agent

(1 mark)

32.9 Mark has received the agenda for the annual general meeting of Nova Co, a company he has shares in. The agenda contains a number of resolutions to be proposed at the meeting but being a new member Mark is not certain as to what exactly is involved.

In the context of company meetings, which of the following requires a 75% majority to be passed?

- ☐ An ordinary resolution with special notice
- ☐ A special resolution
- ☐ A written resolution

(1 mark)

32.10 Which of the following describes the result for any agreement subject to a fundamental breach of contract under the UN Convention on Contracts for the International Sale of Goods?

- ☐ The agreement is void
- ☐ The agreement is avoidable
- ☐ The agreement is unenforceable

(1 mark)

32.11 Section 122 of the UK Insolvency Act 1986 specifically provides a distinct ground for applying to have a company liquidated on the ground that it is just and equitable to do so.

Which of the following parties may petition to have a company compulsorily liquidated on the basis that it is just and equitable to do?

- ☐ Shareholders of the company
- ☐ Creditors of the company
- ☐ Debentureholders of the company
- ☐ The Secretary of State

(2 marks)

32.12 In the context of Sharia law, Riba refers to which of the following?

- ☐ The prohibition of charging interest
- ☐ The name of a particular form of partnership
- ☐ The interpretation of the Quran

(1 mark)

32.13 The UN Convention on Contracts for the International Sale of Goods applies to contracts relating to which of the following?

- ☐ Company shares
- ☐ Ships
- ☐ Aircraft
- ☐ Raw materials to be used in subsequent production

(2 marks)

32.14 Which of the following refers to an arbitral institution?

- ☐ ICC
- ☐ ICI
- ☐ ICA

(1 mark)

32.15 Which of the following **CANNOT** petition for the compulsory liquidation of a company on the grounds of insolvency under s 122 UK Insolvency Act 1986?

- ☐ The board of directors
- ☐ The members of the company
- ☐ The company's creditors
- ☐ The Secretary of State

(2 marks)

(Total = 22 marks)

33 Mixed Multiple Task Questions 1 (Specimen exam) 36 mins

33.1 Axel Co, a German company, operates a business making specialist machinery for the international car manufacturing industry. In 2011, Axel Co entered into an agreement with Bold Co, a Danish manufacturer, to build a specific piece of machinery to Bold Co's specification. The total contract price was \$7 million. However, just before the completion of the machinery, Bold Co informed Axel Co that, due to the downturn in the world economy, it no longer needed the machinery. Axel Co, which had already expended \$5 million in producing the machinery, immediately started an action against Bold Co for breach of contract.

However, in the week before the case was to be decided in court, Axel Co sold the machinery to a new client for exactly the same amount of money that they would have received from Bold Co.

It may be assumed that the UN Convention on Contracts for the International Sale of Goods applies.

- (a) Which **TWO** of the following statements explain the purposes of awarding damages for breach of contract?

- ☐ They are a punishment for the party in breach
 - ☐ They put the parties in the position then were in before the contract was formed
 - ☐ They compensate the innocent party for any financial loss
 - ☐ They put the parties in the position they would have been in had the contract been performed
- (2 marks)**

- (b) Which **TWO** of the following statements in relation to the duty to mitigate losses are correct?

- ☐ It lies with the party in breach of contract
 - ☐ It results in an increase of damages
 - ☐ It reduces damages
 - ☐ It lies with the party who suffers the breach
- (2 marks)**

- (c) What level of damages can Axel Co claim for breach of contract?

- ☐ \$0
 - ☐ \$5 million
 - ☐ \$7 million
 - ☐ \$2 million
- (2 marks)**
(Total = 6 marks)

33.2 Clare, Dan and Eve formed a partnership ten years ago, although Clare was a sleeping partner and never had anything to do with running the business. Last year Dan retired from the partnership. Eve has subsequently entered into two large contracts. The first one was with a longstanding customer, Greg, who had dealt with the partnership for some five years. The second contract was with a new customer, Hugh. Both believed that Dan was still a partner in the business. Both contracts have gone badly wrong, leaving the partnership owing \$50,000 to both Greg and Hugh. Unfortunately the business assets will only cover the first \$50,000 of the debt.

- (a) Which of the following states the liability of Clare as a sleeping partner?

- ☐ She has no liability for partnership debts
 - ☐ She has limited liability set at the amount she has introduced into the partnership
 - ☐ She has full liability for partnership debts
 - ☐ She has limited liability for partnership debts set at a pre-determined level
- (2 marks)**

- (b) Which of the following describes the liabilities of Dan as a retiring partner?
- ☐ He remains liable to new customers who knew he was a member of the partnership, unless he declared his withdrawal
 - ☐ He remains liable to existing customers for a period of six months
 - ☐ His liability for any debts ceases on retirement
 - ☐ He remains liable for any debts or obligations incurred by the partnership prior to retirement
- (2 marks)
- (c) From whom can Greg claim the outstanding debt?
- ☐ Eve and Dan only
 - ☐ Eve and Clare only
 - ☐ Eve only
 - ☐ Eve, Dan and Clare
- (2 marks)
- (Total = 6 marks)**
-

33.3 Jon, who is 65 years of age, has just retired from his employment with a pension and a lump sum payment of \$100,000. He is keen to invest his money but has absolutely no knowledge of business or investment. He does not wish to take any great risk with his investment but he would like to have a steady flow of income from it.

He has been advised that he can invest in the following range of securities:

- (1) Preference shares
 - (2) Ordinary shares
 - (3) Debentures secured by a fixed charge
 - (4) Debentures secured by a floating charge
- (a) In relation to the above investment forms, which is the most secure?
- ☐ Ordinary shares
 - ☐ Preference shares
 - ☐ Debentures secured by a fixed charge
 - ☐ Debentures secured by a floating charge
- (2 marks)
- (b) In relation to the above investment forms, which have a cumulative right to dividends?
- ☐ Preference shares
 - ☐ Ordinary shares
 - ☐ Debentures secured by a floating charge
 - ☐ Debentures secured by a fixed charge
- (2 marks)
- (c) In relation to the above investment forms, which **NORMALLY** participates in surplus capital?
- ☐ Ordinary shares
 - ☐ Debentures secured by a fixed charge
 - ☐ Preference shares
 - ☐ Debentures secured by a floating charge
- (2 marks)
- (Total = 6 marks)**
-

- 33.4 In 2008 Ger was disqualified from acting as a company director for a period of ten years under the Company Directors Disqualification Act 1986 for engaging in fraudulent trading.

However, he decided to continue to pursue his fraudulent business and, in order to avoid the consequences of the disqualification order, he arranged for his accountant Kim to run the business on his instructions. Although Kim took no shares in the company, and was never officially appointed as a director, he nonetheless assumed the title of managing director.

- (a) Identify which of the following categories of director applies to each of Ger, and Kim?

	De facto director	De jure director	Non-executive director	Shadow director
Kim	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ger	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

(4 marks)

- (b) Which of the following characteristics apply to non-executive directors?

- ☐ They have contracts of employment with the company
- ☐ They are involved in the day-to-day business of the company
- ☐ They attend, but do not vote at, meetings
- ☐ They owe fiduciary duties to the company

(2 marks)

(Total = 6 marks)

- 33.5 Fran, and Gram registered a private limited company, Ire Co, in January 2009 with each of them becoming a director of the company. Although, the company did manage to make a small profit in its first year of trading, it was never a great success and in its second year of trading it made a loss of \$10,000.

At that time Fran said he thought the company should cease trading and be wound up. Gram, however, was insistent that the company would be profitable in the long term so they agreed to carry on the business, with Fran taking less of a part in the day-to-day management of the company, although retaining his position as a company director.

In the course of the next three years Gram falsified Ire Co's accounts to disguise the fact that the company had continued to suffer losses, until it became obvious that he could no longer hide the company's debts and that it would have to go into insolvent liquidation, with debts of \$100,000.

- (a) Which type of action civil, criminal, or both, can be taken in relation to fraudulent trading and wrongful trading?

	Civil only	Criminal only	Both civil and criminal
Wrongful trading	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Fraudulent trading	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

(2 marks)

- (b) Does fraudulent or wrongful trading apply to each of Fran and Gram?

	Fraudulent trading (s 213 Insolvency Act 1986)	Wrongful trading (s 214 Insolvency Act 1986)
Gram	<input type="radio"/>	<input type="radio"/>
Fran	<input type="radio"/>	<input type="radio"/>

(4 marks)

(Total = 6 marks)

(Total = 30 marks)

Answers

1 Business, political and legal systems

1.1 Planned economy

The government makes all the decisions in a planned economy. In a market economy, market forces determine resource allocation. A mixed economy involves some government decisions and some market forces in resource allocation.

Syllabus area A1(a)

1.2 Positive law is the law that a state imposes on its citizens

Positive law is the law that a state imposes on its citizens.

Syllabus area A1(a)

1.3 Disagreements caused by differences between one nation's laws and another nation's laws

Conflict of laws is caused by differences between one nation's laws and another nation's laws.

Syllabus area A1(a)

1.4 Beyond reasonable doubt

The standard of proof in a criminal law case is beyond reasonable doubt. The standard of proof in a civil law case is on the balance of probabilities.

Syllabus area A1(c)

1.5 Balance of probability

The standard of proof in a civil law case is on the balance of probabilities. The standard of proof in a criminal law case is beyond reasonable doubt.

Syllabus area A1(c)

1.6 Literal rule

The literal rule states that words should be given their plain, ordinary meaning. In the purposive rule, the judge should consider the purpose of the statute. The contextual rule states that words in a statute should be interpreted in their context.

Syllabus area A1(di)

1.7 To apply the law only

In a civil law legal system, the role of judges is to apply the law. They do not create law.

Syllabus area A1(dii)

1.8 Quran

The key source of Sharia law is the Quran. Madhab are secondary sources of law based on the writings and thoughts of major jurists in the early years of the religion. Ijtihad are processes for ascertaining the law. An Imam is a judge or cleric.

Syllabus area A1(diii)

1.9 Riba

Riba is the concept of unlawful gain. Ijma is a consensus of opinion. Qiyas is an analogical deduction. Sunnah is a source of Sharia law.

Syllabus area A1(diii)

1.10 The legislature

The judiciary

Together with the police, prosecution and the prison systems, the legislature and judiciary are mechanisms which enforce the country's laws. The executive and the head of state are not part of the legal system.

Syllabus area A1(b)

1.11 The Prime Minister

In the UK the head of state is the Monarch and the head of the executive is the Prime Minister.

Syllabus area A1(b)

1.12 The accused

In a criminal trial it is the accused that is brought to court by the prosecution. In a civil law case it is the claimant who sues the defendant.

Syllabus area A1(c)

1.13 Proof to be on the balance of probabilities

A claimant and a defendant

In a civil system of law we see a claimant and a defendant and the lighter burden of proof (on the balance of probabilities). In a criminal system we see the prosecution and the defendant, with a higher burden of proof (beyond reasonable doubt).

Syllabus area A1(c)

1.14 The material facts of each case must be the same

For a precedent to be applied to a particular case, the decision must be based on a proposition of law, not a question of fact, and must form part of the ratio decidendi of the case. The material facts of the cases must be the same.

Syllabus area A1(di)

1.15 Teleological method

In the teleological method of statutory interpretation, the judge seeks to identify the social purpose of the legislation and apply it in a manner that achieves it. The historical method is where the judge looks at the intention of the legislator and then tries to envisage what the intention would be if the law was being drafted in modern times. It is this intention that the judge applies to the case before them.

Syllabus area A1(bii)

2 International trade, legal regulation and conflict of laws

2.1 Public international law

Public international law applies to the conduct and relationships of sovereign states and international organisations. Private international law regulates cases involving the national laws between two or more states.

Syllabus area A2(a)

2.2 Private international law

Private international law regulates cases involving the national laws between two or more states – UN Model Laws are an example of this. Public international law applies to the conduct and relationships of sovereign states and international organisations.

Syllabus area A2(a)

2.3 Disagreements between business organisations in different nations caused by different national laws

Conflict of laws are disputes between parties in different nations – not between national governments. The disputes are caused by each country having different laws on a particular issue.

Syllabus area A2(a)

2.4 UN Model Laws

UN Model Laws may be adopted by nations into their own national laws, but this is optional. Conventions and treaties are binding on nations that sign up to them.

Syllabus area A2(b)

2.5 Choice of laws

The Rome Convention 1980 sets out the principle of choice of laws. This is where parties to a written contract have expressed a preference of a particular law that will apply to the contract then that law should govern the contract.

Syllabus area A2(b)

2.6 The principle of choice of laws states that where parties to a written contract have expressed a preference for a particular law to apply then that law should govern the contract

The principle of choice of laws states that where parties to a written contract have expressed a preference of a particular law that will apply to the contract then that law should govern the contract.

Syllabus area A2(b)

2.7 UNCITRAL

UNCITRAL is the core legal body of the UN. It is responsible for a number of model laws such as the UNCITRAL Model Law on International Commercial Arbitration. ICC is the International Chamber of Commerce and the WTO is the World Trade Organization. Both organisations operate in the field of international trade but do not create model laws.

Syllabus area A2(c)

2.8 WTO

The World Trade Organization (WTO) seeks to promote the free flow of international trade and its agreements are based on principles of free trade. The other organisations are international bodies concerned with trade but do not have the free flow of trade as a goal.

Syllabus area A2(c)

2.9 ICC

The International Chamber of Commerce (ICC) set up the International Court of Arbitration in 1923. The European Union (EU), World Trade Organization (WTO) and Organisation for Economic Co-operation and Development (OECD) are all international organisations but they did not set up the ICA.

Syllabus area A2(c)

2.10 Embargo

An embargo is a total ban on imports from a particular country. A tariff is a tax on imported goods. An import quota is a restriction on the quantity of a product that may be imported but stops short of a total ban. Import restrictions are rules and regulations that make importing goods more difficult.

Syllabus area A2(a)

2.11 Customs duties

A customs duty, like a tariff, is a tax on imported goods. An embargo is a total ban on imports from a particular country. An import quota is a restriction on the quantity of a product that may be imported but stops short of a total ban. Import restrictions are rules and regulations that make importing goods more difficult.

Syllabus area A2(a)

2.12 UN Model Laws

UN Model Laws (such as the Model Law on International Commercial Arbitration) may be adopted by nations to help businesses avoid the problems of conflict of laws. The other options are automatically binding on nations that sign up to them.

Syllabus area A2(b)

2.13 WTO

The Dispute Settlement Body is part of the World Trade Organization (WTO).

Syllabus area A2(c)

2.14 OECD

The purpose of the Organisation for Economic Co-operation and Development (OECD) is to be a forum to discuss, develop and refine economic and social policies.

Syllabus area A2(c)

2.15 UNIDROIT

The International Institute for the Unification of Private Law (UNIDROIT) is an intergovernmental organisation whose rules are in the form of international conventions.

Syllabus area A2(c)

3 Court-based adjudication and alternative dispute resolution mechanisms

3.1 High Court

The Queen's Bench, Family and Chancery are divisions of the High Court.

Syllabus area A3(a)

3.2 Magistrates' Court

In the English criminal law system, all cases begin in a Magistrates' Court.

Syllabus area A3(a)

3.3 The ECJ is part of the legal system of every European Union member state

The ECJ is the highest appeal court in each member state of the European Union (EU). It deals with matters relating to EU treaties, not criminal law, and is a sub-body of the EU.

Syllabus area A3(b)

3.4 The applicant challenges the appointment of one of the arbitrators

A party may have recourse in a court against an arbitral award if they can show that they were not given proper notice of the proceedings so they could not present their case, and if they can show that the award deals with matters that do not fall within the arbitration agreement. It is too late at this stage to challenge an arbitrator's appointment.

Syllabus area A3(e)

3.5 Arbitration agreements must be in writing

To be valid, arbitration agreements must be in writing. There is no need to specify arbitrators in the agreement and the agreement does not have to be filed with the ICA.

Syllabus area A3(c)

3.6 The arbitral tribunal

The arbitral tribunal will determine the procedure that should be followed if the disputing parties had not previously agreed one.

Syllabus area A3(c)

3.7 The rules of law chosen by the parties

The Model Law states that the rules of law chosen by the parties will be applied when an award is made.

Syllabus area A3(e)

3.8 In writing to the parties

The Model Law states that arbitral awards should be made in writing.

Syllabus area A3(d)

3.9 The composition of the tribunal was incorrect

Incorrect composition of the arbitral tribunal is a valid reason. The others are not.

Syllabus area A3(e)

3.10 In court-based adjudication, each party's case is put forward by a legally qualified advocate

In court-based adjudication each party is represented by a legally qualified advocate. The other options are advantages of alternative dispute resolution mechanisms over court-based adjudication.

Syllabus area A3(a)

3.11 ICA

The International Court of Arbitration developed the 1958 New York Convention on written arbitration agreements. This Convention determined that arbitration disputes should go to arbitration rather than court.

Syllabus area A3(b)

3.12 If the claimant fails to provide a statement of claim within the time period specified by the tribunal, arbitration proceedings are terminated

If the defendant fails to provide a statement of defence within the time period specified by the tribunal, arbitration proceedings may still continue

Each point put forward by the claimant – the facts supporting the claim, the points at issue and the remedy sought – must be addressed in the statement in defence. If there is no statement of claim received within the time period set by the tribunal then the whole procedure is terminated, but it can continue if a statement in defence is not received on time – and the tribunal shall not treat the delay as an admission of guilt.

Syllabus area A3(c)

3.13 Three

The UNCITRAL Model Law on International Commercial Arbitration states that three arbitrators shall be appointed to an arbitral panel.

Syllabus area A3(d)

3.14 The two appointed arbitrators

Under the Model Law, where an arbitral tribunal is to have three arbitrators, each party appoints one arbitrator and the two appointed arbitrators appoint the third.

Syllabus area A3(d)

3.15 Be of an appropriate nationality

Independence, impartiality and qualification are the three qualities that an arbitrator must possess.

Syllabus area A3(d)

4 Contracts for the international sale of goods

4.1 Contracts for commodities used in the production of clothing

The Convention states that it does not apply to goods bought at auction or the sale of shares. It does apply for commodities bought for a commercial purpose.

Syllabus area B1(a)

4.2 Between Company A and Company B which are of the same nationality but have their places of business in different states

It is the place of business that is important when determining whether the UN Convention applies. The places of business of the parties must be in different states.

Syllabus area B1(a)

4.3 States may declare that certain parts of the Convention do not apply to it and declare that the Convention does not apply to contracts between itself and particular other states

States do not have to ratify the UNCISG in full and may opt out of it applying between itself and particular other states.

Syllabus area B1(a)

4.4 When it is delivered to the offeree

Under the UNCISG an offer becomes effective when it reaches the offeree.

Syllabus area B1(b)

4.5 When it is delivered to the offeror

Under the UNCISG an acceptance becomes effective when it reaches the offeror.

Syllabus area B1(b)

4.6 Immediately it is received by the offeree

According to the UNCISG, an offer made orally must be accepted immediately unless circumstances dictate otherwise.

Syllabus area B1(b)

4.7 At the same time the offer reaches the offeree

Under the UNCISG, an offer may be withdrawn at any time up to when the offer is delivered to the offeree.

Syllabus area B1(b)

4.8 EXW

EXW means ex-works. The seller simply makes the goods available for the buyer to collect at their own place of business.

Syllabus area B1(c)

4.9 Silence

Inactivity

These do not constitute acceptance under UNCISG.

Acceptance is a statement made by the offeree, or an act such as the dispatch of goods or payment of an agreed price, that indicates assent to an offer.

Syllabus area B1(b)

4.10 When an offer has been made and validly accepted

Under the UNCISG, a contract is formed when an offer is validly accepted.

Syllabus area B1(b)

4.11 A reply that seeks to change the price of the goods from an out-of-date price to an up-to-date price

Replies that seek to make major changes to the terms of an offer are classified as counter-offers. Examples include changes to the price or quantity of the goods supplied, the time or place of delivery or changes to how disputes are to be settled. The updating of prices from an out-of-date price to a new price is a small change that would not be classified as a counter-offer.

Syllabus area B1(b)

4.12 DDP

DDP means delivered duty paid and it is the opposite of ex-works (EXW). The seller delivers the goods to a named place in the country of import with all duties relating to import paid.

Syllabus area B1(c)

4.13 A contract to manufacture soap for a customer in Finland

A contract to supply bread every day to a customer in Spain

Although these are manufacturing contracts we are not told that the customer is to supply materials, and the prime aspect of the contract is not the provision of labour.

The contract to supply skilled French chefs to a hotel in Switzerland is a supply of labour, so is not covered. The contract to manufacture handbags for a customer in Denmark is not covered since it is the customer who provides the leather.

Syllabus area B1(a)

4.14 Mildred may still accept the offer on 31 March as it was irrevocable

No offeror may withdraw an offer after it has reached the offeree, nor may an irrevocable offer be revoked once it has reached the offeree. A contract is formed once acceptance of a valid offer has reached the offeror, so Esme would never be able to reject Mildred's acceptance.

Syllabus area B1(b)

4.15 110% of the contract value

Such insurance must be made through an insurance company of good repute and cover a minimum amount of 110% of the contract value.

Syllabus area B1(c)

5 Obligations and risk in contracts for international sales

5.1 When the goods are handed to the first carrier for transmission to the buyer

Under the UNCISG, a seller discharges their obligation regarding delivery when the goods are passed to the first carrier for transmission to the buyer.

Syllabus area B2(ai)

5.2 Within a reasonable time after the contract is formed

Under the UNCISG, delivery should be made within a reasonable time after the contract is formed.

Syllabus area B2(ai)

- 5.3 Fit for the purpose that goods of the same description would ordinarily be used
Under the UN Convention on Contracts for the International Sale of Goods, goods must be fit for the purpose for which goods of the same description would ordinarily be used.
Syllabus area B2(aii)
- 5.4 To do all reasonably expected acts in order to enable the seller to make delivery
The obligation of the buyer is to do all reasonably expected acts in order to enable the seller to make delivery.
Syllabus area B2(bii)
- 5.5 Where the buyer has refused to accept and pay for the goods
Failure by the buyer to accept and pay for the goods is a fundamental breach of contract and the seller may declare the contract avoided. The seller may not declare a contract avoided if they have granted the buyer extra time to pay, or where the buyer is merely late in their performance.
Syllabus area B2(biii)
- 5.6 A declaration by the buyer before delivery is made that they will not accept or pay for the goods
Anticipatory breach occurs before the time performance is due from the seller or buyer.
Syllabus area B2(ci)
- 5.7 Interest and damages
Where a buyer is late in paying for the goods under a contract, the seller may claim interest on the overdue amount at the statutory rate. This does not prejudice any extra claim for damages.
Syllabus area B2(ciii)
- 5.8 Any party that has partly performed their obligations has the right to restitution
Where a contract is avoided, the rights of the parties to damages, restitution and the settlement of disputes are not affected. The contract does not have to be rectified.
Syllabus area B2(cv)
- 5.9 When the goods are passed to the first carrier for delivery to the buyer
In these circumstances, risk passes when the goods are handed over to the first carrier for transmission to the buyer.
Syllabus area B2(d)
- 5.10 The seller must hand over any documents relating to the goods being delivered
The seller must transfer the property in the goods
The buyer's obligations as to taking delivery are contained in the UNCISG. There is no stipulation here as to confirming receipt of delivery in writing or of the documents.
Syllabus area B1(bi)
- 5.11 Payment of damages
The right to payment of damages is always available to the buyer in any type of breach of contract by the seller. A court does not always have to award performance as a remedy, especially if it would not be awarded in local cases under its own national law. Declaring the contract avoided is only granted where the seller is in fundamental breach of contract. A reduction in price due to lack of conformity of the goods would not be appropriate in circumstances where the seller failed to deliver any goods at all.
Syllabus area B2(aiii)

5.12 At the seller's place of business

Under the UNCISG, where the place of payment is not specified in the contract, payment should be made at the seller's place of business.

Syllabus area B2(bi)

5.13 \$500

Yac is entitled to claim damages of the selling price of \$2,000; this is the cost of the goods under the contract plus his profit. However, he failed to mitigate his loss by selling the goods to Hef, and therefore his damages will be reduced by the amount that the loss should have been mitigated by (\$1,500).

Syllabus area B2(cii)

5.14 The seller may rectify the documents before 31 October provided this does not cause the buyer unreasonable expense – True;

The seller may rectify the documents within a reasonable time provided this does not cause the buyer unreasonable expense – False.

The seller may rectify the documents by the time they were originally due to be handed over; there is no stipulation as to this being done within a reasonable time.

Syllabus area B2(ai)

5.15 Jac must pay Kel \$1,500 for the fruit less \$300 selling expenses

A buyer has a duty to preserve the goods if they intend to reject them and this includes selling them on if they are perishable, therefore Jac fulfilled this duty. He must pay over the \$1,500 raised from the sale to Kel, but may retain the selling expenses.

Syllabus area B2(cvi)

6 MTQ Bank 1

6.1 (a) The correct answer is: Supply of information

Bo's reply to Ax that contained prices and delivery periods will be treated by the Convention as a supply of information.

(b) The correct answer is: Counter-offer

Under the Convention, an offer was made by Ax when he ordered the 3,000 screws and 3,000 specialised nuts and bolts. However Bo did not validly accept this offer as he introduced different payment terms (a material alteration) by asking for payment in advance or a letter of credit. This is classed as a counter-offer which rejects Ax's offer.

(c) The correct answer is: No contract was ever created between Ax and Bo

Bo created a new offer when he acceded to Ax's request for a pro-forma invoice, but the new invoice contained goods of a lower quality. This was rejected by Ax who made a new offer by demanding goods of a higher quality. Bo rejected this offer as he demanded a higher price for the higher quality goods. Therefore no contract was ever created between Ax and Bo and no offer is available for either party to accept.

6.2 (a) The seller must deliver goods which are fit for the purpose that the buyer wishes to put them to

The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract: Article 35.

The goods must be fit for the purposes for which goods of the same description would ordinarily be used.

- (b) Axel did not meet his obligations in respect of examining the goods – false

Axel did not meet his obligations in respect of notifying Beni for the lack of conformity of the cloth – true

Axel would not be awarded damages from Beni for the lack of conformity – true

Axel has a liability to pay Beni the full contractual price for the cloth – true

Under the Convention, a buyer must examine the goods to ensure conformity as soon as possible after delivery. If the contract involves carriage, as Axel's does, the buyer should examine the goods as soon as possible after their arrival. Axel has clearly met this obligation.

The buyer is also obliged to notify the seller of any lack of conformity of the goods within a reasonable period of time after they discovered it or ought to have discovered it. Axel did not notify Beni of the lack of conformity and therefore breached this obligation.

Despite not notifying Beni of the lack of conformity, Axel still has the right to claim damages.

However, the Convention requires an injured party to take reasonable measures to mitigate loss resulting from a breach of contract. As Axel has clearly mitigated any loss by selling all of the furniture made with the blue cloth, he will not be awarded any damages and must pay Beni the full price indicated in the contract.

- 6.3 (a) The right to give the buyer an extra day to perform their obligations if they fail to perform their obligations. The seller has the right to require the buyer to make payment, take delivery or perform their other obligations, unless they have resorted to a remedy which is incompatible with this: Article 62. They may give the buyer additional time to perform, but it has to be a reasonable amount of time – not just an extra day.

- (b) Paul has committed anticipatory breach of contract – correct

Paul has committed a fundamental breach of contract – correct

Jean may declare the contract with Paul avoided – correct

Jean has a duty to mitigate any losses that he may incur – correct

Paul's notification that he does not intend to pay for the machines is an anticipatory breach. As it substantially deprives Jean of what he is entitled to expect under the contract, this is a fundamental breach of contract.

Jean should declare the contract avoided. There seems little point in him waiting to see if Paul changes his mind, as Paul has been very clear about his intentions. He will want to claim damages for the loss he has suffered as a result of Paul's fundamental breach, but he is under a duty to mitigate this loss.

- 6.4 (a) The correct answer is: The buyer collects the goods from the supplier's place of business.

The ICC Incoterm 'ex-works' means that the seller has no obligations other than packing the goods and making them available for the buyer to collect from their place of business.

- (b) The correct answer is: When the carrier collected the goods from Aldo.

The bottles were sold 'ex-works' and therefore the risk of damage to the bottles is transferred to Bod when his carrier collects them from Aldo.

- (c) The correct answer is: Yes, if it is proved that the packaging did not conform to the requirements of the convention.

Bod's best chance of success is to claim that Aldo was in breach of contract because the packaging of the bottles did not conform to the requirements of the Convention. If they had been properly protected then the damage would not have occurred. If Aldo is found in breach of contract then Bod can not only avoid paying him for the bottles he ordered, but will be able to claim damages in respect of the additional costs he incurred in ordering them from another supplier.

There is no term in the convention that states goods must be delivered in 'reasonable condition'.

Aldo does have some liability for the goods once they are collected from him if they are not packaged suitably.

In their undamaged state, the bottles would be suitable for the purpose that Bod wishes to use them for.

- 6.5 (a) The rules on passage of risk indicate whether it is the buyer or seller who should insure the goods being transported. Only one of the parties needs to ensure the goods are insured. The rules on passage of risk indicate at which point each party bears the risk of loss and therefore when they should arrange insurance for. The point at which risk passes will depend on the individual contract.
- (b) Ben. Because Ben's order was specially manufactured, the goods were clearly identified as being the ones subject to the contract when they were handed over to the shipper. This means that the risk to the goods had passed from Ali to Ben.
- (c) Ali. Because the goods were mass produced and therefore part of a larger stock of cloth that was being shipped, risk could not pass until they were identified. This means the risk was still with Ali when the cloth was lost.

7 Transportation documents and means of payment

7.1 Carrier

A bill of lading is a document issued by the carrier that acknowledges that they have received the goods and they have been placed on board a vessel bound for a particular destination.

Syllabus area C1(a)

7.2 Negotiable bill of lading

There are two types of bill of lading, negotiable and non-negotiable.

Syllabus area C1(a)

7.3 The sender and the sender's bank are known as the originator

The sender and the sender's bank are known as the originator. The sender and beneficiary will be the same party when a business transfers cash from a business operation in one state to one of its bank accounts in another state. The sending and receiving bank may be part of the same organisation but they do not have to be.

Syllabus area C1(c)

7.4 The Model Law also applies to credit transfers made by entities that are not banks

The Model Law also applies to credit transfers made by organisations that are not banks. Transfers must be credit rather than debit in nature, and may involve a non-electronic element to the transfer – for example, paper-based payment orders might be used to start the process.

Syllabus area C1(c)

7.5 To pay the receiving bank for the payment order when the receiving bank accepts it

The main obligation of the sender is to pay the receiving bank for the payment order when the receiving bank accepts it.

Syllabus area C1(c)

7.6 Endorsement

Endorsement allows a bill of exchange to be presented for payment by a party other than the original payee.

Syllabus area C1(d)

7.7 On the maturity date or one or two business days after only

Bills of exchange that are not payable on demand should be presented for payment on the maturity date or one or two business days afterwards.

Syllabus area C1(d)

7.8 Letter of credit

A letter of credit is a risk-free method of payment. Letters of comfort offer no protection and bills of exchange and bank transfers do not reduce the risk that the seller will not be paid because the buyer has to arrange the payment.

Syllabus area C1(e)

7.9 This letter is issued by a bank – Letters of credit;

This letter is issued by a parent company – Letters of comfort.

A letter of credit is a method of international payment issued by a bank. A letter of comfort is issued by a parent company that acknowledges approval of the subsidiary company's attempt to raise finance.

Syllabus area C1(e)

7.10 A bill of lading forms the contract of carriage – False;

A bill of lading can be a document of title to the goods – True.

A bill of lading provides evidence of the contract of carriage, but does NOT form the contract of carriage as such.

Syllabus area C1(a)

7.11 The bank causing the delay is liable to pay interest only

Under the Model Law the delaying bank is liable to pay interest only.

Syllabus area C1(c)

7.12 Drawer

Under the Model Law, the purchaser is the drawer. The payee is the party receiving the payment. The drawee is the party (usually a bank) on whom the bill is drawn and who has not accepted it. The acceptor is a party who takes liability for the bill above the drawer.

Syllabus area C1(d)

7.13 Payee

Under the Model Law, the party who receives the payment is the payee. The party making the payment is known as the drawer. The drawee is the party (usually a bank) on whom the bill is drawn and who has not accepted it. The acceptor is a party who takes liability for the bill above the drawer.

Syllabus area C1(d)

7.14 Guarantor

A party who takes responsibility to ensure a bill of exchange is paid is known as a guarantor.

Syllabus area C1(d)

7.15 Revolving

Revolving letters of credit ensure that a line of credit is open at all times. Revocable letters of credit may be amended or cancelled by the buyer at any time. Transferable letters of credit allow the seller to transfer the right to receive payment to another party. Back-to-back letters of credit allow the seller to use the buyer's letter of credit as security to issue a second letter of credit from them as a buyer to the original supplier.

Syllabus area C1(e)

8 MTQ Bank 2

- 8.1 (a) Inland. An inland bill of lading will be used in the contract because it covers overland transport only.
(b) The bill of lading will be issued by Narl – false

The bill of lading will indicate at which point risk passes from Vlad to Narl – true

The bill of lading will provide evidence of, or contain the contract of carriage – true

The bill of lading will be a document of title concerning the goods being shipped – true

The bill of lading will be issued by Jul to provide evidence that the tinned fruit has been received by him. At this point, risk in the goods passes from Vlad to Narl.

The bill of lading will provide Vlad and Narl evidence of, or may itself comprise, the contract of carriage.

As a document of title to the goods being shipped, the bill of lading will ultimately be passed to Narl.

- 8.2 (a) The correct answers are:

- Canute Co – Drawer;
- Ethel Co – Payee;
- Redbank – Drawee;
- Bluebank – Guarantor.

The drawer is the person who has instructed the payment to be made and is usually the party purchasing the goods. In this case it is Canute Co.

The drawee is the party – nearly always a bank – that is instructed by the drawer to pay the payee. In this case it is Canute Co's bank – Redbank.

The payee is the person to which the drawer has instructed payment to be made and is usually the party selling the goods. In this case Ethel Co.

Bluebank is the guarantor because it agreed to guarantee the payment to Ethel Co.

- (b) The correct answer is: Endorsement

Endorsement is the process where a payee transfers their right to payment on a bill of exchange to a third party.

- 8.3 (a) Picard Co, L-bank. The 'originator' is defined as the sender and the sender's bank. Therefore Picard Co and L-bank are the originator.
(b) M-bank. The receiving bank is the bank in the beneficiary's state that receives the funds from the sender's state. In this case it is M-bank.
(c) Yes – Scott Co is entitled to two days' loss of interest. Under the UN Model Law on International Credit Transfer, the beneficiary is entitled to a payment of interest for any delay in the transfer process. Therefore Scott Co is entitled to an interest payment from M-bank that is appropriate to the number of days' delay.

- 8.4 (a) The correct answer is: Letter of comfort

The letter Niblic Co sent to Gip Co gives reassurance to that it is aware of the situation and approves of the liability that its subsidiary will incur. It is therefore a letter of comfort.

- (b) The correct answer is: No, Niblic Co did not accept responsibility for Ingot Co's debt

In *Kleinwort Benson Ltd v Malaysia Mining Corporation Berhad 1989* a creditor attempted to demand payment by a parent company for money owed to it by its subsidiary. However, it was held that the wording of the letter of comfort was sufficient to protect the parent company from liability. Therefore, it is likely that Gip Co will be unsuccessful in its claim against Niblic Co.



- (c) The correct answer is: Letter of credit

Gip Co could have used a letter of credit to protect itself from the insolvency of Ingot Co. Such an arrangement provides a secure method of payment and the seller has no risk at all that payment will not be received. Instead of having to wait for payment, and suffer the costs and uncertainty that are inherent in offering credit, on presentation of all the requisite documents the seller receives payment immediately of the amount due to them less a discount.

- 8.5 (a) Letters of credit eliminate the risk to the seller of not being paid. Letters of credit entitle the seller to immediate payment. A letter of credit provides a method of payment in international trade such that the seller (such as Max) has no risk at all that payment will not be received. Instead of having to wait for payment, and suffer the costs and uncertainty that are inherent in offering credit, on presentation of the requisite documents Max receives payment immediately of the amount due to him less a discount. There is no tangible benefit to the buyer who still pays the full amount due from them.

- (b) Max requests Old Bank to issue a letter of credit on behalf of Nisar – false

Max can ship the goods when Pin Bank agrees to handle the credit on terms arranged with Old Bank – true

Max receives payment before the funds leave Nisar's bank account – true

Nisar will receive the goods after the funds have left his bank account – true

The Letter of Credit process is as follows:

- Nisar requests Old Bank to issue a letter of credit in favour of Max (by issuing the letter of credit Old Bank guarantees that Max will be paid).
- Old Bank asks Pin Bank to advise the letter of credit to Max.
- Pin Bank agrees to handle the credit on terms arranged with Old Bank (Max can now ship the goods).
- On production of the requisite documents relating to the transfer of goods and other matters, Pin Bank pays Max and forwards the documents to Old Bank.
- Old Bank double checks the documents and then reimburses Pin Bank.
- The payment is deducted from Nisar's account with Old Bank, and the documents are handed over to Nisar so goods can be released to Nisar by the carrier arranged by Max and Nisar as part of the contract.

9 Agency law

9.1 Principal and third party

In an agency relationship, the purpose of the agent is to form a contract between the principal and a third party.

Syllabus area D1(a)

9.2 Either oral or written agreement

Express agreements can be oral or in writing.

Syllabus area D1(b)

9.3 Agency by estoppel

Agency by estoppel occurs where one party 'holds out' to another that a person is acting as their agent.

Syllabus area D1(b)

9.4 Implied authority

Express authority is the authority actually granted by the principal to the agent. Ostensible authority is the authority that the agent represents to others that the agent has. What is usual or customary in the circumstances is implied authority.

Syllabus area D1(c)

9.5 Express and implied authority

The combination of express and implied authority is known as an agent's actual authority.

Syllabus area D1(c)

9.6 Agent

Unless circumstances indicate otherwise, the principal and third party will be liable under a contract formed by an agency relationship.

Syllabus area D1(d)

9.7 A third party and principal do not need to be in direct contact for a binding contract between them to be formed

Only the principal and third party have rights and obligations under a contract formed under an agency relationship. Direct contact between them is not required to form a binding contract, the agent acts as a 'middle man' between them.

Syllabus area D1(d)

9.8 Partner

Accountancy practices are run as partnerships by partners.

Syllabus area D1(a)

9.9 The principal must communicate their ratification of the contract clearly to the third party

The principal must have existed and had legal capacity when the contract was formed. The entire contract must be ratified. The principal must communicate their ratification clearly to the third party.

Syllabus area D1(b)

9.10 Agency by implied agreement, Agency by estoppel

Agency by estoppel and implied agreement are known as agency without consent. A principal expressly consents to agency by express agreement and ratification.

Syllabus area D1(b)

9.11 There is no agency agreement but the principal states publicly that a person is their agent – Agency by estoppel;

There is no agency agreement but the principal looks after another person's property when they cannot be contacted – Agency by necessity.

Agency by estoppel is created when a person 'holds' out that a person is their agent when in fact no agency agreement exists between them. Agency by necessity is created, often in emergency situations, where a person takes control over another person's property, usually when they are out of contact or where time is of the essence.

Syllabus area D1(b)

9.12 The authority that is usual in the circumstances and what the principal impliedly gives the agent

Ostensible authority includes whatever is usual in the circumstances plus whatever the principal impliedly gives the agent.

Syllabus area D1(c)

- 9.13 Where a principal has represented a person to third parties as being their agent, despite not actually appointing the person as such

An agent's apparent authority is determined by what the principal has represented to others. A principal telling the agent their authority is express authority. A third party determining the authority to be based on what is usual in the circumstances is implied usual authority.

Syllabus area D1(c)

- 9.14 Performance by the principal of their contractual obligations

The death, insanity or bankruptcy of a principal or agent will terminate the agency relationship. Otherwise agency will continue until the parties agree to terminate the relationship.

Syllabus area D1(c)

- 9.15 Where it is usual business practice for the agent to be liable, Where the agent acts on their own behalf even though they purport to be acting for the principal

An agent will be liable on a contract if they intended to take personal liability, where it is usual business practice for them to be liable or where they act on their own behalf even though they purport to be acting for the principal.

Syllabus area D1(d)

10 Partnerships

- 10.1 A partner can be an individual living person or a registered company

A partner can be an individual person or a registered company. A partnership must just have the intention to be profitable and it can exist for a single business transaction.

Syllabus area D2(a)

- 10.2 Limited partnership

In a limited partnership there is a partner who invests in the business but does not take part in the day-to-day running of the business.

Syllabus area D2(a)

- 10.3 A decision by the partners to set up business together

To form an unlimited liability partnership the partners just need to decide to set up business together.

Syllabus area D2(b)

- 10.4 What is agreed between the partners

Partnership authority is based on agency law. Actual authority is determined by what the partners agree.

Syllabus area D2(c)

- 10.5 Retiring partners are liable only for existing partnership debts when they leave, unless third parties are notified that they have retired

Retiring partners are liable for existing partnership debts, and those incurred after their retirement, unless third parties are notified of their retirement. This is because as far as third parties are aware, a partner is a partner until they are told they are no longer so.

Syllabus area D2(d)

- 10.6 Bankruptcy of a partner

The bankruptcy of a partner will terminate the partnership.

Syllabus area D2(d)

- 10.7 External debts

When a partnership is terminated, external debts are paid off first.

Syllabus area D2(e)

10.8 The partnership dissolves when a partner leaves

An LLP must have two designated partners responsible for the publicity requirements of the partnership. A written partnership agreement is not required to form the partnership. The partnership does not dissolve when a partner leaves and is not exempt from audit.

Syllabus area D2(a)

10.9 The partnership is liable for its own debts

An LLP is liable for its own debts. Partners are only liable for partnership debts up to the amount of their capital contribution. LLPs do have to file accounts with the Registrar of Companies and all partners may take part in the day-to-day running of the partnership.

Syllabus area D2(a)

10.10 Terms in the agreement override terms implied by the Partnership Act 1890, Written partnership agreements are not required on formation and may be created at any point in the life of the partnership

Written partnership agreements are not required on formation of a partnership and, like any contract, may be created at any point. Terms in a written partnership agreement override terms in the Partnership Act 1890. They are not required by law when there are 20 partners and do not have to be in the form of a deed.

Syllabus area D2(b)

10.11 Partnerships can grant fixed charges only

Partnerships can only grant fixed charges.

Syllabus area D2(d)

10.12 Existing partnership debts on the day they are admitted to the partnership – Not liable;

All partnership debts incurred after their admission to membership – Liable.

New partners are only liable for partnership debts incurred after their admission to membership.

Syllabus area D2(d)

10.13 Formal liquidation

To dissolve an LLP, it needs to be liquidated, in a similar way to a company.

Syllabus area D2(e)

10.14 Partners' share of partnership profits

Any surplus profit after all the other debts are repaid is distributed to the partners in the profit sharing ratio.

Syllabus area D2(e)

10.15 Notice by a partner, The end of an agreed fixed period of time for the partnership.

Under the Partnership Act 1890, notice by a partner and the end of an agreed fixed period of time for the partnership will result in its termination.

Syllabus area D2(e)

11 Corporations and legal personality

11.1 No formal procedures to set up the business

A benefit of running a business as a sole trader is that there are no formal procedures involved in setting one up. High dependence on the owner and an absence of economies of scale are disadvantages of being a sole trader.

Syllabus area D3(a)

11.2 All of a sole trader's profits accrue to the owner

All profits of a sole trader accrue to the owner. The business is not legally distinct from the owner and sole traders may need to register for VAT.

Syllabus area D3(a)

11.3 The amount of share capital they have purchased, including any amounts outstanding on the shares that they own

In a company limited by shares, a member's liability is limited to the amount of company share capital they have purchased, including any amounts outstanding.

Syllabus area D3(b)

11.4 A company limited by guarantee

Companies limited by guarantee do not have share capital.

Syllabus area D3(c)

11.5 £50,000

The minimum issued share capital of a public company is £50,000.

Syllabus area D3(c)

11.6 The company is liable for its own debts

Separate legal personality means that the company is responsible for its own debts. Members and directors are not protected from the force of the law because the veil of incorporation can be lifted. Members are liable up to the amount they have contributed in share capital if the company is insolvent.

Syllabus area D3(d)

11.7 Where a director commits fraudulent trading

Out of all the options, the courts will only lift the veil of incorporation with regard to fraudulent trading by a director.

Syllabus area D3(e)

11.8 The business is run by one person who is not legally distinct from the business

A sole trader business is run by a single person who is not legally distinct from the business. The other options may be true for a sole trader, but they may also be true for various types of company and partnership as well.

Syllabus area D3(a)

11.9 A company limited by shares

Out of the options, a company limited by shares is the only one available to the group that will limit their liability to an amount that they agree to when the company is formed. On formation, each member will agree to a limit on their liability – the nominal value of their shares.

Syllabus area D3(b)

11.10 A public company must have a minimum of two directors, A public company cannot be an unlimited liability company

A public company is required to have a minimum of one member and two directors. Public companies cannot have unlimited liability. Public company names must end with 'plc'.

Syllabus area D3(c)

11.11 Net profit of no more than £1.0 million

Net profit is not a criteria that must be met when qualifying for the small companies' regime. The other options are valid criteria.

Syllabus area D3(c)

11.12 Listed company

A public company does not have to have its shares traded on a public stock exchange. If it does so, then it becomes known as a listed (or quoted) company.

Syllabus area D3(c)

11.13 A company is a parent company if it holds debentures in another company

Holding debentures in a company does not make that company a subsidiary. The other options are correct statements in regards to parent companies.

Syllabus area D3(c)

11.14 Separate legal personality can be ignored in certain circumstances

Separate legal personality can be ignored in certain circumstances (this is known as lifting the veil of incorporation).

Syllabus area D3(d)

11.15 To allow directors of insolvent companies to be found liable for the debts of the company, To treat a group company as a single economic entity

The veil may be lifted to allow directors of insolvent companies to be found liable for their debts or to identify a group as a single economic entity. Lifting of the veil is not required in the other two options.

Syllabus area D3(e)

12 Company formation

12.1 Reasonable skill and care

The general duty of a promoter is reasonable skill and care.

Syllabus area D4(a)

12.2 Pre-incorporation contracts cannot be ratified by the company

Legally, pre-incorporation contracts cannot be ratified by the company.

Syllabus area D4(b)

12.3 The company

The promoter and third party are liable on a pre-incorporation contract. The company never is.

Syllabus area D4(b)

12.4 It must obtain a trading certificate from the Registrar of Companies

Before it can trade, a public company must be issued with a trading certificate from the Registrar of Companies. None of the other options are criteria for obtaining a trading certificate.

Syllabus area D4(c)

12.5 It must have obtained a certificate of incorporation from the Registrar of Companies

A private company can trade as soon as it has obtained a certificate of incorporation from the Registrar of Companies. No trading certificate is required.

Syllabus area D4(c)

12.6 Register of debentureholders

Keeping a register of debentureholders is not a legal requirement, although most companies will hold such a register. The other options are company books that a public company is required by law to keep.

Syllabus area D4(d)

12.7 The register must include a service address for each director

A register of directors must include a service address for each director. It does not include a list of shadow directors. It should be available for members to inspect for free.

Syllabus area D4(d)

12.8 Promoter

The role of a promoter is to form a company.

Syllabus area D4(a)

12.9 A promoter that acts as an agent for others must not put themselves into a position where their own interests clash with that of the company they are forming

Where a promoter acts as an agent for others, they must not put themselves into a position where their own interests clash with those of the company. Accountants acting in a professional capacity are not promoters. A promoter may make a legitimate profit as a result of their position. There is nothing to stop a promoter from owning shares in the company that they form.

Syllabus area D4(a)

12.10 Buying an 'off-the-shelf' company, Novating the contract

Buying an 'off-the-shelf' company and novating the contract are two ways that a promoter can avoid liability on a pre-incorporation contract. The other options will not prevent the promoter from being liable.

Syllabus area D4(b)

12.11 Articles of association

All the documents, except for the articles of association, must be sent to the Registrar to register a company. If articles of association are not submitted then the company will be issued with model articles relevant to the type of company being formed.

Syllabus area D4(c)

12.12 6/1/X1

The date on the certificate of incorporation is conclusive proof of the date of incorporation.

Syllabus area D4(c)

12.13 If its share capital falls below £50,000

A public company must re-register as a public company if its share capital falls below £50,000.

Syllabus area D4(c)

12.14 Filing a copy of each company's Register of Members

The Registrar is responsible for registering all companies and for issuing Certificates of Incorporation. They also file copies of special resolutions sent in by each company. The Register of Members is only held by the company itself.

Syllabus area D4(d)

- 12.15 Private companies must keep their accounting records for three years, Public companies must keep their accounting records for six years

Private companies must keep their accounting records for three years, public companies for six years.

Syllabus area D4(d)

13 Constitution of a company

- 13.1 The subscribers

It is the subscribers who sign the memorandum of association.

Syllabus area D4(e)

- 13.2 Model articles of association describe how the company is to be managed and administered

Model articles of association describe how the company is to be managed and administered. Companies can use any version of model articles that they like and members are free to amend their contents.

Syllabus area D4(f)

- 13.3 Clauses relating to the mission statement of the company

Model articles of association may refer to the objects of the company, but this is not the same as the mission statement. The other options are examples taken from the content of model articles.

Syllabus area D4(f)

- 13.4 A company requires a special or written resolution with a 75% majority to change its articles

A special or written resolution with a 75% majority is sufficient to change a company's articles. There is no restriction on the number of times per year the articles may be changed. Copies of the amended articles must be submitted to the Registrar within 15 days of the amendment taking effect.

Syllabus area D4(g)

- 13.5 Changes that conflict with the Companies Act

Changes to company articles that conflict with the Companies Act are void. The other options are valid changes.

Syllabus area D4(g)

- 13.6 A company may be required to change its name if it is deemed offensive by the Secretary of State

A company may be required to change its name if it is deemed offensive. It may set its own rules for changing its name, and names that suggest a connection with the Government are permitted providing the appropriate permission is granted.

Syllabus area D4(h)

- 13.7 A company may change its name but not its domicile

A company may change its name but not its domicile.

Syllabus area D4(h)

- 13.8 The company

A company's constitution contractually binds the company and members in their capacity as members.

Syllabus area D4(e)

- 13.9 The contract will be binding on the company and the third party

S 40 of the Companies Act 2006 protects the interests of third parties when a contract with a company is outside the scope of the company's objects.

Syllabus area D4(e)

13.10 Payment of dividends, Appointment of directors

Payment of dividends and appointment of directors are included in the content of model articles of association. Payment of charitable donations and formation of a remuneration committee are not included.

Syllabus area D4(f)

13.11 The content of model articles of association includes clauses relating to communication with members

Communication with members is covered by model articles of association. Model articles differ depending on the type of company. They do not contain clauses on remuneration of employees or ethical treatment of suppliers.

Syllabus area D4(f)

13.12 Ordinary resolution of a plc – Insufficient;

Written resolution of a private company with a 75% majority – Sufficient.

Altering a company's constitution requires passing with a special resolution or a written resolution with a 75% majority.

Syllabus area D4(g)

13.13 An alteration may not compel members to purchase more shares in the company – True;

An alteration must be bona fide for the benefit of all the company's members – False.

Alterations may not compel members to subscribe for more shares and must be bona fide for the benefit of the company as a whole. This may mean some members feeling that their interests are damaged by it.

Syllabus area D4(g)

13.14 No name may be offensive or sensitive as defined by the Secretary of State

No name may be offensive or sensitive as defined by the Secretary of State. Some private companies may omit 'Ltd' from their name. Names that suggest a connection with the Government are not void but official approval is required to use them. Welsh companies are not required to end their name with '(Cym)'.

Syllabus area D4(h)

13.15 A company can be prevented by a court injunction from using its name, even if it is properly registered, Courts can refuse an injunction to prevent the use of a company name if the businesses are sufficiently different in nature

An injunction can prevent the use of a properly registered company name. A court may refuse an injunction if the businesses are sufficiently different in nature because the chance of customer confusion is low. Courts and the Company Names Adjudicators may change a company's name if necessary. Failure to refer to the Company Names Adjudicators first will not stop a passing-off action from succeeding.

Syllabus area D4(h)

14 MTQ Bank 3

14.1 (a) The correct answer is: All of the partners are liable to repay the overdraft because Sam had authority to withdraw the funds

Sam has taken money from the firm's bank account to use for a personal holiday. However, as a partner, and in the absence of any specific mention to the contrary in the agreement, he has authority to withdraw money from the bank account. His action has therefore incurred a debt to a third party that is owed by all three partners, not just himself, and if he cannot repay the money to the bank, the bank is entitled to sue the other partners for the balance.

- (b) The correct answer is: All of the partners are liable because Tam has apparent authority to enter into the contract on behalf of the partnership.

Tam entered into a contract to buy bicycles in the name of the partnership. The partnership agreement specifies that the partnership should only sell petrol, so Tam does not have authority to undertake this contract. However, the third party is not privy to the partnership agreement so is not aware that the contract is beyond the scope of the partnership. Tam has apparent authority to undertake the contract on behalf of the other partners who are liable on the contract.

- (c) The correct answer is: Ham, Sam, Tam and Cam.

Purchasing petrol is a normal part of business for this partnership. Whoever made the contract would have had authority to do so and bound the other partners to the contract. Cam is liable because the creditors were not notified of his retirement until May 20X8.

- 14.2 (a) The business is viewed as a legal person in its own right, separate from its owners. Separate corporate personality means that a company is distinct as a separate legal person from its owners, directors, employees and other business organisations. The distinction between a company and its members was clearly set out in *Salomon v Salomon & Co Ltd 1897*.

- (b) A consequence of registering his business as a company is separate legal personality and limited liability. The benefits to Mick are:

The company, rather than Mick, will be liable for any negligence claims made against the business.

The limit of Mick's liability in respect of the business will be any amount unpaid on his shares.

The company can enter into the new contracts in its own right because they have not yet been entered into.

However, Mick will still be liable on the business loan as it was entered into before formation of the company.

- 14.3 (a) The correct answers are:

The company's creditors may not demand payment for the company's debts from the members.

The limit of the members' liability is the amount unpaid on their shares.

A consequence of limited liability is that a company itself is liable without limit for its own debts. If the company buys goods from a supplier it owes the supplier money. Limited liability is a benefit to members. They own the business, so might be the people whom the creditors logically ask to pay the debts of the company if the company is unable to pay them itself. Limited liability prevents this by stipulating the creditors of a limited company cannot demand payment of the company's debts from members of the company (*MacDonald v Costello 2011*). The limit of a member's liability is any amount unpaid on their shares.

- (b) The correct answer is: A court may lift the veil of incorporation to enforce the clause against Fitt.

Fitt has a legal obligation not to pursue Doc's clients and by setting up Gen Co he has attempted to use the veil of corporate personality to evade this obligation. The case of *Gilford Motor Co Ltd v Horne 1933* suggests that the court would find in favour of Doc and enforce the agreement between Doc and Fitt.

- (c) The correct answer is: Doc may only pursue Ed Co for the debt.

In the case of his contract with Ed Co, Doc cannot pursue Ed Co's debt by suing Ed. This is because Ed is only a member of Ed Co and has no liability for the company's debts (*Salomon v Salomon & Co Ltd 1897*).

- 14.4 (a) Don is liable on the contract as Eden Inc was not in existence when it was formed. The general rule is that a promoter is personally liable on any completed pre-incorporation contract entered into with a third party. A pre-incorporation contract is a contract purported to be made by a company or its agent at a time before the company has received its certificate of incorporation.

In the situation involving the computer equipment, the directors of Eden Inc are not legally bound to honour the purported contract with the supplier. The supplier will have to take action against Don for breach of contract.

- (b) Patent – not enforceable. There is no contract involving the company because the company did not exist when the contract was formed. If the other party does not wish to proceed with the agreement, the directors of Eden Inc will be unable to show any obligation for them to do so.

Business equipment – not enforceable. There is no contract since Eden Inc does not wish to pursue the arrangements with Fad Co. Fad Co therefore has no cause of action against either Don or the company. This is because the 'contract' was 'subject to adoption by Eden Inc' and this condition never happened - therefore the contract is not valid.

- 14.5 (a) The company's shareholders. The Companies Act 2006 provides that a company's articles of association bind a company to its members (the shareholders), the members to the company and members to members. Members are deemed to have separately covenanted with each other and the company to observe the provisions of the articles.
- (b) Special resolution, written resolution. A company's articles of association may be altered by passing a special resolution to that effect in general meeting. As a private company, Glad Co may also pass a written resolution to the same effect with a 75% majority.
- (c) No – because requiring 'any member' to transfer their shares at a fair price does not benefit the company. A change to a company's articles is generally valid if it is of benefit to the company, and this certainly appears to apply in Fred's case (he is in direct competition with Glad Co). However, in *Dafen Tinplate Co Ltd v Llanelly Steel Co (1907) Ltd 1920* a similar amendment was held to be invalid because it permitted the company to acquire the shares of any member, even if there were no specific grounds to show that it would benefit the company. The resolution actually proposed by Glad Co is the same because it would allow the company to acquire the shares of any member for a fair price. Therefore it is likely to be held as invalid under the facts of the *Dafen* case.

15 Share capital

15.1 One

A public company must have a minimum of one member.

Syllabus area E1(a)

15.2 Ordinary shares may or may not have voting rights attached

Ordinary shares may or may not have voting rights attached. Dividends do not have to be paid every year and ordinary shares do not entitle the shareholder to have their capital repaid ahead of other creditors on liquidation.

Syllabus area E1(b)

15.3 Treasury shares may be reissued for cash without the usual issuing formalities

Any limited company may create treasury shares by purchasing its own shares for cash or out of distributable profit. It cannot exercise voting rights attaching to the shares, but may re-issue them for cash without the usual issuing formalities.

Syllabus area E1(b)

15.4 Members of the public subscribe for shares directly to the company

A public offer is where the public subscribe for shares directly to the company. An offer for sale is an offer to the public to buy shares based on information in a prospectus. A placing involves individuals or institutions being offered shares in a small number of large blocks based on agreement to buy shares at a pre-determined price.

Syllabus area E1(c)

15.5 An offer to existing shareholders to purchase further shares in the company

A rights issue is an offer to existing shareholders to buy further shares in the company. A bonus issue is the allotment of additional shares to shareholders in proportion to their holdings.

Syllabus area E1(c)

15.6 Shares may be issued at a premium to their nominal value

Shares may be issued at a premium to their nominal value and the premium is credited to the share premium account. Therefore shares do not have to be issued at their nominal value. Shares must not be issued at a discount to their nominal value.

Syllabus area E1(d)

15.7 Where a shareholder did not pay the full nominal value of their share on issue, the debt transfers to the new shareholder if the share is sold

The company does not have to receive the full nominal value of the share when it is issued. Such shares are known as partly-paid shares. Any balance owing on partly-paid shares transfers to the new shareholder if the share is sold.

Syllabus area E1(d)

15.8 The amount the company has required shareholders to pay on existing shares

Called-up share capital is the amount the company has required shareholders to pay on existing shares. A company's issued share capital is the type, class, number and amount of shares issued to shareholders. The amount existing shareholders have paid on existing shares is the paid-up share capital.

Syllabus area E1(a)

15.9 Market value may be equal to, greater or lower than nominal value

A share's market value is based on the prospects of the company and may be equal, greater or lower than nominal value.

Syllabus area E1(a)

15.10 Preference shares do not normally entitle the shareholder to vote in company meetings, Preference shareholders usually have a right to have their capital returned in the event of a liquidation ahead of ordinary shareholders

Preference shareholders do not usually have the right to vote in company meetings but they do have the right to have their capital repaid ahead of ordinary shareholders in the event of a liquidation. On liquidation, preference shareholders usually have no right to share in any surplus assets. A company is not compelled to pay a dividend on preference shares.

Syllabus area E1(b)

15.11 Changing the amount of dividend payable to a class of preference share

Class rights are rights that attach to a specific class of share. It would therefore be a variation of class rights if the amount of dividend payable on a class of preference share is changed. The other options are examples of what does not constitute a variation of class rights.

Syllabus area E1(b)

15.12 Directors of private companies with one class of share have the power to allot shares unless restricted by the articles

Only directors of private companies with one class of share have the power to allot shares unless restricted by the articles. Directors of all other companies must have authority from the members to do so.

Syllabus area E1(c)

15.13 A company proposes to allot ordinary shares wholly for cash

Pre-emption rights only apply when a company proposes to allot ordinary shares wholly for cash.

Syllabus area E1(c)

- 15.14 A private company may allot shares for inadequate consideration by accepting goods or services at an over-value

A private company may accept goods or services for payment at an over-value. No independent valuation is required. A public company may issue shares for non-cash consideration and at least 25% of the nominal value of the shares must be paid up on allotment.

Syllabus area E1(d)

- 15.15 To issue fully paid shares under a bonus issue, To pay issue costs and expenses in respect of a new share issue

The permitted uses of a share premium account are to issue fully paid shares under a bonus issue or pay issue expenses and commissions in respect of a new share issue.

Syllabus area E1(d)

16 Loan capital

- 16.1 All companies registered under the Companies Act 2006 have an implied power to borrow

All companies registered under the Companies Act 2006 have an implied power to borrow.

Syllabus area E2(a)

- 16.2 All debentures rank equally

Pari passu means that all debentures rank equally.

Syllabus area E2(b)

- 16.3 Interest payments on debentures is mandatory, dividend payments on shares is discretionary

Interest on debentures must be paid and is tax-deductible. Dividends are only paid if the directors declare them and payment is not tax-deductible. In the event of liquidation, debentureholders have their investment repaid before anything is returned to the shareholders.

Syllabus area E2(c)

- 16.4 A fixed charge with a value of \$2,000 registered on 1 February 20X1

A fixed charge will always have priority over a floating charge created before it if the fixed chargeholder was not aware of the other charge.

Syllabus area E2(d)

- 16.5 The chargee appointing a receiver

Active intervention by the chargee, such as appointing a receiver will cause the charge to crystallise. The other options will not cause the charge to crystallise.

Syllabus area E2(d)

- 16.6 21

Charges must be registered within 21 days of creation.

Syllabus area E2(e)

- 16.7 A charge may be registered late if it does not prejudice the creditors or shareholders of the company

A charge may be registered late but only if it does not prejudice the creditors or shareholders of the company.

Syllabus area E2(e)

- 16.8 Where directors exceed their borrowing powers, the company may ratify the loan contract if it is within the capacity of the company

A loan contract that is beyond the powers of the directors may be ratified by the company if it is within the capacity of the company. Charges are not required for a loan contract to be enforceable. Loan contracts are enforceable by the lender even if they are ultra vires.

Syllabus area E2(a)

- 16.9 Debenture stock

Out of the options, only debenture stock must be created using a debenture trust deed. Single and series debentures may use a debenture trust deed but this is not compulsory.

Syllabus area E2(b)

- 16.10 The deed creates a charge or charges over the company's assets which creates security, A single trustee of the debentureholders is appointed so the company only has to deal with one person

A debenture trust deed creates security for the debentures via charges. A single person (a trustee) is appointed. This means the company only has to deal with one person rather than a number of individual debentureholders. Debentures covered by a debenture trust deed do not have a higher priority of repayment and are not necessarily faster to sell.

Syllabus area E2(b)

- 16.11 Unlike loan capital, share capital does not have to be repaid

Share capital does not have to be repaid, unlike a loan which must be repaid at some point. Share capital has voting rights but loan capital does not. Loan capital offers the holder more security than share capital because it has a higher priority to be repaid and may be secured on assets by a charge. Both loan and share capital are transferrable.

Syllabus area E2(c)

- 16.12 A public sale of shares is known as a prospectus, the public sale of debentures is known as a listing

The public sale of shares and debentures are both known as a prospectus. The other options are true statements.

Syllabus area E2(c)

- 16.13 To prevent the company from issuing a subsequent charge on the same asset

A 'negative pledge' clause prevents the company from issuing subsequent charges on the same asset.

Syllabus area E2(d)

- 16.14 This charge attaches to an asset once an event occurs that causes it to crystallise – Floating charges;

This charge prevents the company from dealing with the charged asset without the permission of the chargeholder – Fixed charges.

A floating charge only attaches to the charged asset once an event occurs that causes it to crystallise. A fixed charge attaches to the charged asset on creation and this prevents the company from dealing with the charged asset without the permission of the chargeholder.

Syllabus area E2(d)

- 16.15 Charges must be registered within 21 days of creation, If a charge is not registered on time then the company and its officers who created the charge are liable to a fine

A charge must be registered within 21 days of creation or the company and officers that created it will be liable for a fine. A court order is required to rectify a mistake in the registration documents. The Registrar cannot deem non-registered charges as valid and enforceable.

Syllabus area E2(e)

17 Capital maintenance and dividend law

- 17.1 Companies should not make payments out of capital to the detriment of creditors

The principle of capital maintenance states that companies should not make payments out of their capital to the detriment of creditors.

Syllabus area E3(a)

- 17.2 A limited company is permitted without restriction to cancel its unissued shares

There are no restrictions on a limited company concerning the cancellation of unissued shares because such a change will not affect its financial position.

Syllabus area E3(a)

- 17.3 A special resolution and a solvency statement from the directors

A private company may reduce its share capital without application to a court if it passes a special resolution and obtains a statement of solvency from the directors.

Syllabus area E3(a)

- 17.4 A special resolution and court approval

A special resolution and court approval are required for a public company to reduce its share capital.

Syllabus area E3(a)

- 17.5 Scrip dividends

Scrip dividends are paid by issuing additional shares.

Syllabus area E3(b)

- 17.6 When it is declared by the company in general meeting

A dividend becomes a debt of the company when it is declared.

Syllabus area E3(b)

- 17.7 Capital redemption reserve

A capital redemption reserve is an undistributable reserve. Dividends may be paid out of retained earnings or accumulated realised profits.

Syllabus area E3(b)

- 17.8 A company's creditors

The rules on capital maintenance exist to protect the interest of a company's creditors.

Syllabus area E3(a)

- 17.9 Buy back fully paid up share capital from shareholders using cash not surplus profit

Buying back shares using cash not surplus profit is not a method of reducing share capital permitted by the Companies Act. The other options are valid methods of reducing share capital.

Syllabus area E3(a)

- 17.10 A solvency statement must be made 15 days in advance of the meeting where the special resolution concerning the reduction will be voted on. It is an offence to make a solvency statement without reasonable grounds for the opinion expressed in it

A solvency statement must be made 15 days before the meeting where the special resolution to reduce the company's share capital will be voted on. It is an offence to make a solvency statement without reasonable grounds. All the company's directors must be named on the statement and solvency statements must declare that the company should be able to pay its debts for the next 12 months.

Syllabus area E3(a)

- 17.11 A public company that wishes to reduce its share capital to below £50,000 must re-register as a private company

Public companies must have a minimum share capital of £50,000. If any reduction takes the value to below £50,000 then the company must re-register as a private company.

Syllabus area E3(a)

- 17.12 Interim dividends

Dividends paid part of the way through a company's financial year are known as interim dividends.

Syllabus area E3(b)

- 17.13 A depreciation charge made in the current financial year

Depreciation in the current year is a realised loss that is included in the calculation of distributable profit. Asset revaluations are unrealised and not included. Only realised profits in the current or previous financial years are included. A premium received on issuing shares goes to the share premium account and is not included in the profits available for distribution.

Syllabus area E3(b)

- 17.14 A public company may make a distribution as long as its net assets are not less than its share capital plus its undistributable reserves

A public company may make a distribution as long as its net assets are not less than its share capital plus its undistributable reserves

Syllabus area E3(b)

- 17.15 Directors are liable if they declare a dividend that they know to be paid out of capital, Members who did not know the payment was unlawful are not liable

Directors who know dividends are unlawful will be liable, but those who honestly rely on proper accounts when making the decision to pay the dividend are not liable. Liability is in civil law not criminal law. Members who did not know the payment was unlawful are not liable.

Syllabus area E3(b)

18 MTQ Bank 4

- 18.1 (a) Issued share capital. A company's issued share capital is the type, class, number and amount of shares actually held by its shareholders. Therefore it is the term related to the number of shares held by shareholders.
- (b) Paid-up share capital. Paid-up share capital is the amount of a company's issued share capital that it has actually received payment for from the shareholders. It is therefore the term related to the amount of money received by the company from shareholders for their shares.
- (c) £12,500 plus the full amount of any share premium. The Companies Act states that for a public limited company, the issued share capital must be at least £50,000 of which at least one quarter (£12,500) plus the full amount of any share premium must be paid up.

- 18.2 (a) The correct answer is: Shares may be issued at a premium to their nominal value but not at a discount to it.

The general rule on issuing shares states that shares may be issued at a premium to their nominal value but may not be issued at a discount to it.

- (b) The correct answer is: \$2,500.

Under the Companies Act, Flop Co had a remaining call on Gus after the first issue for the amount left unpaid on his shares of $(10,000 \times 25 \text{ cents} = \$2,500)$.

- (c) The correct answer is: \$6,000 plus interest.

Flop Co is trying to issue shares at a 60 cents discount to their nominal value. This is disallowed under the Companies Act and Gus is liable for the balance ($10,000 \times 60 \text{ cents} = \$6,000$) plus interest.

- 18.3 (a) The priority right to a dividend granted to preference shareholders, The right to attend company meetings granted to ordinary shareholders but not preference shareholders. A company's shares confer certain rights on the members who own them. Where only one type of share exists the rights are normally the same, however different types of share will often confer different rights. For example preference shares usually entitle the member to a fixed dividend with priority of payment over ordinary shares and priority over the repayment of capital (ahead of ordinary shares) in the event of a liquidation. Other class rights may attach regarding voting or the right to remove a director. Any share that has different rights from others is grouped with the other shares carrying identical rights to form a class.

- (b) 15% of members of the affected class. Class rights may be varied providing a special resolution is passed by members of that class. For an alteration to be valid the majority must honestly believe that it is in the interest of the company as a whole and that it would be in the interests of a hypothetical individual member. A minority of members that hold at least 15% of the shares of the class may apply to the court to have a variation cancelled.

- (c) No – because it does not have enough votes to block the resolution and the court is unlikely to uphold a request from it to have the variation cancelled. The reduction of dividends proposed by the directors of Lux Co is clearly a variation of a class right that under the statutory variation procedure requires a 75% majority by special or written resolution. Kudos Co is likely to want to prevent this variation but as it only holds 20% of the shares in the class it cannot prevent the variation by itself. However, Kudos Co does hold over 15% of the shares in the class so it could apply to the court for the variation to be cancelled. As the effect on Kudos Co is relatively minor and as it affects all shareholders equally it is likely that the court would uphold the variation.

- 18.4 (a) Companies have no legal obligation to keep a register of debentureholders. A company is not required by law to keep a register of debentureholders.

- (b) Although B Bank's charge documentation states that a fixed charge was created, Milly Co may deal with the charged asset as it wishes to. This fulfils the criteria for a floating charge and therefore the charge will be registered as a floating charge. C Bank's charge is a legitimate fixed charge that has been correctly registered. Therefore it has priority.

- (c) Peppa Co's charge, whilst created first, was not registered within 21 days. It is therefore not valid. Otto Co's charge was validly registered and therefore will take priority in the event of liquidation.

- 18.5 (a) The correct answer is: \$3,000.

The revaluation reserve and share premium accounts are undistributable reserves. No profits were carried forward so the only profit available for distribution as a dividend are the profits earned in the year (\$3,000).

- (b) The correct answer is: Liable as directors for declaring unlawful dividends and as shareholders for knowingly receiving unlawful dividends.

Dee and Eff would be liable as directors (for declaring unlawful dividends) and as shareholders (who knew or had reasonable grounds to believe the dividend was unlawful) if the dividend paid was in excess of the company's distributable profit.

- (c) The correct answer is: Paying out a cumulative dividend to preference shareholders

The dividend rules apply to every form of distribution of assets except the following:

- The issue of bonus shares whether fully or partly paid
- The redemption or purchase of the company's shares out of capital or profits
- A reduction of share capital
- A distribution of assets to members in a winding up

19 Company directors

19.1 De jure

A de jure director is expressly appointed. A de facto director is held out by the company to be a director. A shadow director is neither, they are a person whose instructions the actual directors are accustomed to follow.

Syllabus area F1(a)

19.2 16

Company directors must be at least 16 years old.

Syllabus area F1(b)

19.3 All of the directors

At the first AGM of a public company, all the directors are required to retire.

Syllabus area F1(b)

19.4 The authority that the board expressly gives to them

A CEO's actual authority is whatever the board gives to them.

Syllabus area F1(c)

19.5 Articles of Association

The power of a company's directors is defined in its Articles of Association.

Syllabus area F1(c)

19.6 The company as a whole

A director owes their statutory duties to the company as a whole.

Syllabus area F1(d)

19.7 Where the company's Articles of Association state that they are liable

Directors will be liable for a company's debts if the Articles of Association say that they are. There may be financial penalties for a director who breaches their fiduciary duties, but taking over personal responsibility for the company's debts is unlikely to be one of them.

Syllabus area F1(d)

19.8 De facto director

A de jure director is expressly appointed. A de facto director is held out by the company to be a director. A shadow director is neither, they are a person whose instructions the actual directors are accustomed to follow. An alternate director is appointed by a director of a company to attend and vote for them at board meetings they are unable to attend.

Syllabus area F1(a)

19.9 They are not involved in the day-to-day running of the company

Non-executive directors are not involved in the day-to-day running of the company. A de facto director is held out by the company to be a director. A shadow director is a person whose instructions the actual directors are accustomed to follow. All directors are subject to statutory duties.

Syllabus area F1(a)

19.10 Insolvency of a company that they are a director of, Conduct making them unfit to be concerned in the management of a company

Being a director of an insolvent company or being unfit to be concerned in the management of a company are the two grounds where a court must disqualify. The other options are grounds where they court may disqualify.

Syllabus area F1(b)

19.11 Ordinary resolution with special notice

The removal of a company director from office requires an ordinary resolution with special notice.

Syllabus area F1(b)

19.12 For a proper purpose that is honestly believed to be in the best interests of the company

Directors should use their powers for a proper purpose that they honestly believe to be in the best interests of the company.

Syllabus area F1(c)

19.13 The members may ratify their actions but an ordinary resolution is required

Members can ratify such actions but an ordinary resolution is required.

Syllabus area F1(c)

19.14 Promote the success of the company

Directors who consider the long-term consequences of their decisions on employees are meeting their duty to promote the success of the company.

Syllabus area F1(d)

19.15 The knowledge, skill and experience that the director actually has, The knowledge, skill and experience that is reasonably expected of a person carrying out the functions of the director

A director is expected to show the level of knowledge, skill and experience that is reasonably expected of a person who is carrying out their function and the levels that they actually have.

Syllabus area F1(d)

20 Other company officers

20.1 Public limited company

Only a public limited company must have a company secretary.

Syllabus area F2(a)

20.2 A company's sole director

A company's sole director may not act as company secretary. A company's accountant or solicitor may act as company secretary.

Syllabus area F2(a)

20.3 The directors

A company secretary is appointed by the directors.

Syllabus area F2(a)

20.4 The accountancy firm responsible for producing the company's accounts

Accountancy firms often audit the accounts that they have prepared. Employees of a company and their partners are expressly prevented from acting as company auditor.

Syllabus area F2(b)

20.5 The directors

The directors appoint the first ever auditors of their company.

Syllabus area F2(b)

20.6 Auditors of private limited companies

Only auditors of private companies are deemed automatically reappointed unless specific circumstances apply.

Syllabus area F2(b)

20.7 To report to the members that the accounts give a true and fair view and have been properly prepared in accordance with the Companies Act

The statutory duty of an auditor is to report to the members on the truth and fairness of the accounts and whether the accounts have been prepared in accordance with the Companies Act.

Syllabus area F2(b)

20.8 The Board of Directors

It is the Board of Directors that sets the specific duties of the company secretary.

Syllabus area F2(a)

20.9 Car hire for transporting customers to meetings with the directors

A company secretary has the power to bind the company in contracts related to the administrative side of the company only. It was decided in *Panorama Developments (Guildford) Ltd v Fidelis Furnishing Fabrics Ltd 1971* that this includes a contract for hiring cars to transport customers.

Syllabus area F2(a)

20.10 Establishing and maintaining the company's statutory registers, Filing accurate returns with the Registrar of Companies

A company secretary would expect to be responsible for establishing and maintaining the company's statutory registers and filing accurate company returns with the Registrar of Companies.

Syllabus area F2(a)

20.11 Full membership of the ACCA

A full member of the ACCA is qualified to act as a company secretary. Employment as a plc's company secretary is also valid qualification, but the employment must be for three out of the five preceding years.

Syllabus area F2(a)

20.12 To access, at all times, the books, accounts and vouchers of the company

A company auditor has the right, at all times, to access the books, accounts and vouchers of the company.

Syllabus area F2(b)

20.13 Ordinary resolution with special notice

As with directors, an ordinary resolution with special notice is required to remove an auditor from office.

Syllabus area F2(b)

20.14 A statement to members and creditors of whether there are circumstances that the auditor believes should be brought to their attention

Where an auditor of a non-quoted company is removed at a general meeting they must provide members and creditors with a statement of whether there is anything that should be brought to their attention.

Syllabus area F2(b)

20.15 Turnover less than £10.2 million, Balance sheet total less than £5.1 million

A private company is exempt from audit if its turnover is less than £10.2 million, its balance sheet total is less than £5.1 million and it has fewer than 50 employees on average.

Syllabus area F2(b)

21 Company meetings and resolutions

21.1 Public limited company

Only public limited companies must hold annual general meetings.

Syllabus area F3(a)

21.2 21

21 days' notice must be given in respect of annual general meetings.

Syllabus area F3(a)

21.3 14

14 days' notice is required for a special resolution.

Syllabus area F3(b)

21.4 51%

An ordinary resolution requires a simple majority of the votes cast to be passed. 50% is not enough because no majority is achieved and those voting against the resolution can have the same number of votes. 51% is therefore the minimum.

Syllabus area F3(b)

21.5 90%

90% of the members of a private company may agree to a shorter notice period.

Syllabus area F3(c)

21.6 5%

Members controlling 5% of the voting rights may requisition a resolution at an annual general meeting.

Syllabus area F3(c)

21.7 One

On a vote on a show of hands, each member receives one vote.

Syllabus area F3(c)

21.8 Approving the payment of dividends

Approving dividends is included in the ordinary business of an AGM.

Syllabus area F3(a)

21.9 Altering the Articles of Association

The alteration of the Articles requires a special resolution. The other items of business require an ordinary resolution.

Syllabus area F3(a)

21.10 The text of a special resolution must be set out in full in the notice conveying the meeting. The text of an ordinary resolution does not need to be set out in full, Copies of special resolutions must always be sent to the Registrar of Companies. Ordinary resolutions do not generally have to be sent to the Registrar

The text of special resolutions must be included in the meeting notice and copies must be sent to the Registrar for filing. Both types of resolution require 14 days' notice and both can be voted on via a show of hands or a poll.

Syllabus area F3(b)

21.11 Written resolution

Only private companies may pass written resolutions.

Syllabus area F3(b)

21.12 Removal of an auditor

Removal of an auditor (or a director) are the only items of business that may not be achieved by a written resolution.

Syllabus area F3(b)

21.13 28

Special notice is 28 days.

Syllabus area F3(c)

21.14 Six weeks

Members must make their request and identify the resolution six weeks before the meeting.

Syllabus area F3(c)

21.15 To speak at the meeting, To demand a poll

Proxies may speak at a meeting and demand a poll. They may vote on a show of hands and a poll. They may not requisition a meeting.

Syllabus area F3(c)

22 MTQ Bank 5

22.1 (a) Duties created by Parliament under the Companies Act. Before the Companies Act 2006, directors owed common law fiduciary duties based on principles of trust and honesty. These fiduciary duties, and others, were put onto a statutory basis in the Companies Act 2006. This means that the duties are now enshrined in the statute books rather than being based in common law. The duties do not come from service contracts or the UK Corporate Governance Code.

(b) Promote the success of the company – not breached

Duty to exercise independent judgment – not breached

Declare interest in proposed transaction or arrangement – breached

Declaration of interest in existing transaction or arrangement – breached

It appears that Caz has not disclosed either her interest in Era Co or her interest in this particular contract. Under s 177 of the Companies Act (declare interest in proposed transaction or arrangement), the interest should have been stated at the board meeting that Caz attended that approved the contract. It was not. It should also have been declared under s 182 of the Companies Act (declaration of interest in existing transaction or arrangement) once it had occurred – but it was not either. The other duties have not been breached. The success of the company has not been affected nor was Caz's judgement affected by others.

22.2 (a) The authority granted to the director by the board of directors. A director's express authority to enter into a particular contract is granted formally by the board of directors. Where such express authority is given, the company will be bound by the agreement.

(b) To enter the company into any administrative or commercial contract. Where there is no express authority, authority may be implied from the director's position within the company. Chief Executive Officers usually have authority to make commercial contracts on behalf of the company, but they would also have authority to enter the company into administrative contracts as well. The company secretary usually only has implied authority to enter the company into administrative contracts. If limits are set by the board then this concerns express, not implied, authority.

- (c) Yes – Mo is entitled to assume that Len had implied authority to enter into the contract. The circumstances in which Katch Co finds itself are very similar to that of the *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd 1964* case. Len has been allowed by the board to act as if he were Chief Executive Officer and therefore as a third party Mo is entitled to assume that he has the implied authority of one. This authority permits him to bind the company in commercial contracts, so the company will be bound by the advertising contract entered into by Len. Katch Co therefore has a liability to pay Mo or be sued for breach of contract.
- 22.3 (a) The correct answer is: All companies must hold a meeting if they wish to remove a director.
All directors facing removal have the right to speak at a meeting.
A private company can have one director but a public company needs two.
The minimum age of a director is 16.
All company directors must be natural persons.
- (b) The correct answers are:
- Boo – Shadow director;
 - Mills – De jure director;
 - Beni – De facto director;
 - Suki – Non-executive director.
- Mills was appointed as a director on registration and is therefore a *de jure* director.
Beni was not officially appointed as a director but is held out to be the company's managing director on its paperwork. He runs the business on Boo's instructions and is therefore a *de facto* director.
Boo has not been appointed as a director, nor is she held out by the company to be a director. However, because the director (Mills) is accustomed to act on her instructions (via Beni) she is a shadow director of the company.
Suki was appointed to provide an independent view on how the company is being run – a role of a non-executive director.
- 22.4 (a) The correct answer is: Div was free to act as company secretary as soon as he was appointed.
Qualification as a solicitor is sufficient for a person to be appointed as a company secretary.
Authorisation from the Registrar, passing professional company secretarial exams and passing company resolutions are not required to appoint a company secretary.
- (b) The correct answer is: No, because the contract is commercial in nature.
The powers of the company secretary have historically been very limited, but the common law increasingly recognises that they may be able to act as agents in some circumstances. Specifically, they may enter the company into contracts connected with the administrative side of the company: *Panorama Developments (Guildford) Ltd v Fidelis Furnishing Fabrics Ltd 1971*. Envy Co will not be bound by the contract because it is commercial, rather than administrative, in nature.
- (c) The correct answer is: No, a sole director may not act as company secretary.
Under the Companies Act, a sole director may not be appointed as company secretary. Therefore even though Vic is qualified to act as company secretary by virtue of being ACCA qualified, he may not act as Envy Co's company secretary.
Both private and public companies may appoint company secretaries.
- 22.5 (a) Fixing the auditor's remuneration, Considering the directors' report. The ordinary business to be transacted at an annual general meeting includes the consideration of the directors' and auditors' reports and the company accounts, the election of directors and appointment of auditors, the fixing of auditors' remuneration and the declaration (not paying) of dividends. The company secretary's appointment is a matter for the directors at a directors' meeting.

- (b) No – insufficient notice was given to members. Every public company must hold an annual general meeting in each calendar year within six months of the company's year end. At least 21 days' written notice must be given unless all members entitled to attend agree to shorter notice. Therefore, although the meeting was held in the correct time after the company's year end, there was insufficient notice given because not all the shareholders agreed to the shorter notice.
- (c) Yes – auditors have authority in law to request a general meeting to hear circumstances behind their resignation. Under the Companies Act, a general meeting can be called by an auditor who gives a statement detailing the circumstances for their resignation or other loss of office and requires their explanation to be considered by the company. Therefore the directors must uphold the request.

23 Insolvency and administration

23.1 The members

The members always commence a voluntary liquidation.

Syllabus area G1(a)

23.2 The solvency of the company

Although a voluntary liquidation is commenced by the members, it is the solvency of the company that determines whether it is a members' or creditors' voluntary liquidation. If the company is solvent then it is a members' voluntary liquidation, if it is insolvent then it is a creditors' voluntary liquidation.

Syllabus area G1(a)

23.3 A creditor who is owed more than £750 and who sent the company a written demand for it over three weeks ago and has not had a reply

Creditors owed more than £750 and who sent a written demand for payment but have not heard from the company in 21 days may request the compulsory liquidation of the company. The other parties may not request the compulsory liquidation of a company.

Syllabus area G1(b)

23.4 When the main object of the company cannot be achieved

The just and equitable ground will be applied where the object of the company cannot be achieved. The other options are not grounds for the just and equitable liquidation of a company.

Syllabus area G1(b)

23.5 Members

When a company is liquidated, the members share any surplus remaining after all the other debts have been repaid.

Syllabus area G1(c)

23.6 To attempt to rescue the company as a going concern

The main purpose of administration is to attempt to rescue the company as a going concern. During this time the company will be protected from legal action but this is not the purpose of administration.

Syllabus area G1(d)

23.7 A floating chargeholder

Only floating chargeholders, directors and the company itself may appoint an administrator without a court order.

Syllabus area G1(e)

23.8 Liquidator

A liquidator is in charge of a voluntary liquidation. The official receiver is in charge of a compulsory liquidator. An administrator is in charge of an administration.

Syllabus area G1(a)

23.9 As soon as the members pass the necessary resolution

A members' voluntary liquidation commences as soon as the necessary resolution is passed.

Syllabus area G1(a)

23.10 A written resolution of the members with a 75% majority, A special resolution of the members

Only the members can commence a creditors' voluntary liquidation. They can do so with either a special resolution or written resolution with a 75% majority (private companies only).

Syllabus area G1(a)

23.11 An insolvency practitioner acts as liquidator – Voluntary liquidation;

The liquidation process is controlled by the court – Compulsory liquidation.

In a voluntary liquidation an insolvency practitioner acts as liquidator (in a compulsory liquidation the official receiver acts as liquidator). The process of compulsory liquidation is controlled by the court (in a voluntary liquidation the members or creditors control the process).

Syllabus area G1(b)

23.12 The liquidator must hold an annual general meeting of the contributories

In a members' voluntary liquidation, the liquidator must hold an annual general meeting of the contributories within three months of the anniversary of the commencement of the liquidation. Creditors have no input into a members' voluntary liquidation, hence they have no say in the choice of liquidator and there is no need to give notice in *The Gazette*. The final act of the liquidator is to dissolve the company and remove its name from the register.

Syllabus area G1(b)

23.13 The liquidator

The liquidator has the highest priority for payment when a company is liquidated.

Syllabus area G1(c)

23.14 If the company cannot be rescued as a going concern, the next objective of administration is to achieve a better result for creditors than an immediate liquidation would

If a company cannot be rescued as a going concern then the next objective of administration is to achieve a better result for creditors than an immediate liquidation. Liquidation and administration are mutually exclusive, a liquidation order cannot be made if an administration order is already in place. Administrations may be made by certain parties without a court order. An administrator is put in charge of a company in administration.

Syllabus area G1(d)

23.15 After 12 months have elapsed since the administration commenced, The success of the administration

A period of administration ends 12 months after it commenced or following the success of the administration. It may also end following a court order granted on application by the administrator or a creditor, or if an improper motive for applying for administration is discovered.

Syllabus area G1(e)

24 MTQ Bank 6

- 24.1 (a) The directors. A voluntary liquidation is instigated by a company resolution that states that the company cannot continue to trade. For the liquidation to be a members' voluntary liquidation, the directors must issue a statement of solvency. If they do not issue a statement of solvency then the liquidation is a creditors' liquidation.
- (b) Son will need the agreement of Lon to instigate a members' voluntary liquidation – true
Son will need the agreement of Lon to instigate a compulsory liquidation – false
A court is likely to order a just and equitable winding up of Jinx Co – true
An insolvency practitioner would oversee a compulsory liquidation of Jinx Co – false
A compulsory liquidation is one ordered by the court under s 122 Insolvency Act 1986 on one or more of seven specified grounds. One of these grounds is that it is just and equitable to wind-up the company.
A member who is dissatisfied with the directors or controlling shareholders over the management of the company may petition the court for a liquidation on the basis that to do so is just and equitable. Such liquidation orders have been made where there is a complete deadlock in the management of the company's affairs and where the trust and confidence between both directors and shareholders in a small company have broken down. Due to the complete deadlock in the management of the company's affairs, and the lack of trust between the brothers, it is likely that a court will order it to be liquidated on the just and equitable ground.
Compulsory liquidations are overseen by the official receiver. In order to instigate a members' voluntary liquidation, is started by a resolution of the members and the directors must issue a statement of solvency. Both actions require the agreement of the brothers.
- 24.2 (a) A debt of £750 or more, Failure to pay the debt or offer reasonable security for it. Under s 122 Insolvency Act 1986, where a creditor is owed more than £750 and makes a written (not oral) demand for payment and the company fails to pay the debt, or offer reasonable security for it, within three weeks, the company is deemed unable to pay its debts.
- (b) The company will be unable to sell the office building once compulsory liquidation commences – correct
The threatened legal action by the creditor can no longer proceed under any circumstances once compulsory liquidation starts – incorrect
Unless the liquidator decides otherwise, the employees will be dismissed once compulsory liquidation starts – correct
On commencement of the compulsory liquidation, the floating charges will crystallise – correct
The company may not dispose of the office building from the commencement of the liquidation unless approved by the court.
The creditor may not commence legal action against the company except with the leave of the court.
The employment of the company's staff ceases unless the liquidator retains them to carry on the business.
The company's floating charges will crystallise. The creditors will be paid in accordance with the priority of charges and funds available from the assets.
- 24.3 (a) Administration orders put an insolvency practitioner in control of the company, Administration orders can be used to realise property in order to make a distribution to creditors. An administration order is an order of the court that puts an insolvency practitioner in control of the company with a defined programme for rescuing the company from insolvency as a going concern. Its effect is to insulate the company from its creditors while it seeks, to save itself, or failing that, to achieve a better result for creditors than an immediate liquidation would secure, or failing that, to realise property so as to make a distribution to creditors.

- (b) Notice in the prescribed form – required

Statement of insolvency – not required

Statutory declaration – required

Latest set of financial statements – not required

Applying for an administration order involves sending a notice in the prescribed form identifying the proposed administrator and a statutory declaration that:

- (i) The company is, or is likely to be, unable to pay its debts
 - (ii) The company is not in liquidation
 - (iii) As far as ascertainable there is no restriction in making the appointment
- (c) Yes – providing the company can increase its revenue above its costs. The problem with Lazy Days Co's case is whether or not the purpose of administration will be achieved. The company is currently running at a \$7,000 loss per month and this must be solvable for the administration order to be granted. If the company can argue that it has a good chance of increasing trip sales from 50% to nearer 80% to 90% and that these extra sales will make up the shortfall in revenue then it would have a good chance of obtaining the order. Administration orders are not granted just because a company is running at a loss and insolvency would not prevent one being granted providing the company could be turned around. Limited companies can be subject to an administration order as well as plcs.

- 24.4 (a) The correct answer is: Creditors' voluntary liquidation.

The shareholders have decided to wind-up the company and therefore administration and compulsory liquidation are not appropriate. Because the company is insolvent (assets worth less than liabilities) a creditors' voluntary liquidation is the most appropriate.

- (b) The correct answers are:

- Dividend – 4th
- Costs of liquidation – 1st
- Business creditors – 3rd
- Employee wages – 2nd

The company has total assets of \$15,000. The first debt that must be paid is the liquidation costs (\$5,000) and the second debt payable is the preferential debt of employee wages (\$6,000). This leaves \$4,000 to distribute to the business creditors. This equates to half their money back. The dividend would be the last payment to be made but there are no funds left to pay it.

- 24.5 (a) The correct answer is: Preferential creditor.

Employee wages are a preferential debt and therefore Earl will be a preferential creditor in respect of them.

- (b) The correct answer is: None.

Earl's shares are fully paid and therefore he cannot be required to make any further payment on them. As an employee and debentureholder he is a creditor of the company and no call for the company's debts can be made of him.

- (c) The correct answer is: Earl may appoint a receiver of the land and order its sale.

As a fixed charge holder, Earl may only appoint a receiver for the asset and order its sale in order to repay the debt.

25 Fraudulent and criminal behaviour

25.1 A company's auditor

An insider is a person who has information from an inside source through being a director, employee, or shareholder, or because of their employment, office or profession. Customers and suppliers are not likely to be privy to inside information.

Syllabus area H1(a)

25.2 Civil law only

Market abuse is a civil law offence.

Syllabus area H1(b)

25.3 The company as a whole

To prevent individuals from benefiting from deferred prosecution agreements, they are only offered to organisations.

Syllabus area H1(e)

25.4 Layering

Layering involves the transfer of monies to disguise their original source.

Syllabus area H1(c)

25.5 It is an offence for a corporation to fail to prevent bribery

Bribery is a criminal offence. It can occur inside or outside the UK and corporations can be liable if they fail to prevent bribery.

Syllabus area H1(d)

25.6 Deferred prosecution agreement

A deferred prosecution agreement is made under the Crime and Courts Act 2013 and allows an organisation to admit wrongdoing and pay a fine but avoid a criminal case being brought against it.

Syllabus area H1(e)

25.7 Make good the debts of the company

Fraudulent trading under the Insolvency Act 1986 is a civil – not a criminal offence. Any directors found guilty are liable to make good the company's debts.

Syllabus area H1(f)

25.8 The individual had no expectation of profit

No expectation of profit is a valid defence to a charge of insider dealing. The other options are not valid defences.

Syllabus area H1(a)

25.9 A finance director who makes a deliberately deceptive profit forecast

Market abuse involves the deliberate manipulation of the stock market or those trading in the stock market. The issue of a deliberately deceptive profit forecast misleads the market about the company's prospects and is considered market abuse.

Syllabus area H1(b)

25.10 The initial disposal of proceeds from criminal activity – Placement;

The attempt to disguise the original source of criminal funds – Layering.

Placement is the initial disposal of proceeds from criminal activity. Laying involves transferring money to conceal the original source of the funds.

Syllabus area H1(c)

25.11 National Crime Agency

Suspicious of money laundering should be reported to the National Crime Agency.

Syllabus area H1(c)

25.12 Receiving reasonable corporate hospitality – Not a bribery offence

Accepting an incentive to perform a function of a public nature – Bribery offence

Syllabus area H1(d)

25.13 The business was involved in criminal tax evasion, A member of the company's staff or its agent facilitated the tax evasion, The business failed to prevent the member of staff or agent from committing the offence.

For a business to be liable under the Criminal Finances Act 2017, all three must be proved. However, a company has a defence if it had reasonable prevention procedures in place (even if they failed). Reasonable prevention procedures are not required if it was unreasonable or unrealistic for the company to have such procedures in place. Partnerships are 'relevant bodies' as well as companies.

Syllabus area H1(e)

25.14 It must be proved that the defendant intended to commit this wrongdoing – Fraudulent trading;

Defendants who commit this wrongdoing have only committed a civil offence – Wrongful trading.

Intention must be proved in cases of fraudulent trading (ie that the defendant intended to defraud others) but is not required in cases of wrongful trading. Wrongful trading is a civil offence. Fraudulent trading is both a civil and criminal offence.

Syllabus area H1(f)

25.15 Wrongful trading, Making a false declaration of solvency

Wrongful trading is committed when the directors allow a company to trade when there is no reasonable prospect of the company avoiding liquidation. Making a false declaration of solvency is committed when the company wishes to arrange a members' voluntary liquidation and the directors falsely declare that the company is solvent.

Syllabus area H1(f)

26 MTQ Bank 7

26.1 (a) The correct answers are:

- Slye – Committed an offence;
- Mate – Committed an offence;

Slye has inside information as an insider as a director and employee of Huge Inc. Slye knows that the information is inside information. He then buys shares in Large Inc, which constitutes dealing because he is 'acquiring securities'. He has therefore dealt in price-affected securities while in possession of inside information as an insider, and has committed the offence of insider dealing.

Mate has knowingly received inside information from a person whom he knows to be an insider (Slye), so he has become an insider and in dealing he too has committed the primary offence of insider dealing.

(b) The correct answer is: Tim did not commit a criminal offence because the advice he was given was not precise or specific.

Tim did not receive inside information, this is because the information that Slye told him was neither precise nor specific, so he has committed no offence.

26.2 (a) Insolvency Act 1986 – insolvency or administration required

Companies Act 2006 – insolvency or administration not required

Under s 213 Insolvency Act 1986, the offence of fraudulent trading is actionable if the company is in liquidation or administration. Under s 993 Companies Act 2006, the offence is actionable whether or not the company is insolvent or in administration.

(b) Fraudulent trading under s 213 Insolvency Act 1986 – Del committed offence, Rod no offence committed

Wrongful trading under s 214 Insolvency Act 1986 – Both Del and Rod have committed offences

Because Del falsified the company's accounts, and the company is insolvent, he is likely to be guilty of intention to defraud under s 213 Insolvency Act 1986. There is not enough evidence to prove Rod is guilty – the prosecution is unlikely to be able to prove he intended to defraud the creditors or others.

Del will be personally liable under s 214 Insolvency Act 1986 for the increase in the company's debts since it is already established that he is likely to be liable for fraudulent trading which carries a higher standard of proof. Rod will also be liable for the company's debts, since as a director of a company, he should have been aware of the situation.

26.3 (a) The offence of money laundering applies where funds have been obtained through any criminal activity, The offence of money laundering applies where the source of illegitimate funds are disguised.

Money laundering is the term given to attempts to make the proceeds of crime appear respectable. There is no minimum value for the funds. It covers any activity by which the apparent source and ownership of money representing the proceeds of crime are changed so that the money appears to have been obtained legitimately. It is not restricted to certain business sectors.

(b) Ian – money laundering and failure to report

Jet – money laundering

Ian has assisted in Jet's money laundering, so may be convicted of money laundering under the Proceeds of Crime Act. He may also be found guilty of failure to report under the Proceeds of Crime Act.

Jet is guilty of the main offence of money laundering under the Proceeds of Crime Act.

26.4 (a) Vic is not the victim of any criminal offence and cannot claim for the profit he missed out on by selling his shares. Vic sold his shares willingly and it is unfortunate for him that the share price subsequently may have risen. He has no right of action.

(b) Market abuse – misuse of information – offence committed

Market abuse – market distortion – offence not committed

Insider dealing – insider dealing – offence committed

Insider dealing – encouraging another to deal – offence committed

Misuse of information is any behaviour by an individual that is based on information that is not publically available, but if it was, it would influence an investor's decision. This describes Sid's behaviour and therefore Sid has committed this market abuse offence.

Under the Criminal Justice Act 1993, Sid is an insider by virtue of his position as director in Trend Inc and Umber Inc. The information he holds is price-sensitive as it concerns large profits and large losses. Therefore, it would appear that he is liable for dealing in price-affected securities. None of the defences would apply to him as he clearly expected to make a profit in one transaction and to avoid a loss in the other.

He also becomes liable for the offence of encouraging another to deal in price-affected securities when he advises his brother to buy shares in Umber Inc. This is even though we are not told whether the brother actually bought the shares and that no inside information was passed.

- 26.5 (a) The correct answer is: Shares and associated derivatives, debt securities and warranties.
Insider dealing legislation covers dealing in shares and associated derivatives, debt securities and warranties
- (b) The correct answers are:
Greg – Both
Helen – Committed a money laundering offence
- Greg's position as a director of Huge Inc makes him an insider, the takeover information is clearly inside information and by instructing Jet Inc to buy Kop Inc shares he was involved in dealing. Therefore he has committed the offence of insider dealing.
- The profit on the sale of the Kop Inc shares was created as a result of insider dealing – a criminal offence. Greg has sought to disguise the profit by transferring it as a consultancy fee to Imp Inc and as a dividend to himself. Therefore he has also committed the offence of money laundering.
- Helen committed no offence in respect of insider dealing, however she did commit the offence of tipping off when she told Greg that she would report him for money laundering.

27 Mixed Global Law Questions 1

- 27.1 To ensure that problems between individuals and groups are sorted out as they arise
The law is there as a mechanism to sort out problems as they arise in a democratic system, whereas in more dictatorial political systems the law is there to enforce and support the political system.
Syllabus area A1(a)
- 27.2 If the parties did not know that their places of business were in different states when the contract was concluded then the UNCISG does not apply
The UNCISG expressly does not cover the seller's liability for death or personal injury caused by the goods to any person, and the nationalities of the parties are not taken into account when determining whether the UNCISG applies. Parties to a contract are bound by any usage or custom to which they have agreed and by any practices established between themselves.
Syllabus area B1(a)
- 27.3 A planned economy
The government decides how resources should be used in a planned economy. In a market or a free economy these decisions are left up to market forces (supply and demand); in a mixed economy there is a mix of planned and free market allocation.
Syllabus area A1(a)
- 27.4 A sale of shares to a stockbroker
The UNCISG does not apply to goods bought for personal, family or household use by the buyer, but if a consignment of goods for personal (cosmetics) or family (school uniforms) use is sold by one trader to another then this is a sale of goods to which the UNCISG applies.
Syllabus area B1(a)
- 27.5 The one most closely connected to the contract and its performance
The one most closely connected to the contract and its performance. Note that the party's habitual residence is only taken to be its place of business if it has no place of business, not if it has several.
Syllabus area B1(a)

27.6 The judiciary, the executive and the legislature

Separation of powers refers to the degree of separation and the balance of power between the three main political organs: the judiciary, the executive and the legislature. It can also refer to the degree of separation and the balance of power between the head of state and the head of the executive. It does not refer to the balance between the head of state and the head of the judiciary only, nor between the heads of the executive and legislature only. Finally, the police are part of the legal system, not the political system.

Syllabus area A1(b)

27.7 A common law system

The common law is named after the historic system developed in the UK. Civil law and Sharia law systems are different types of system found in other countries.

Syllabus area A1(d)

27.8 Acceptance

An offer does not come to an end through acceptance; instead it becomes a contract for the international sale of goods. An offer ends through rejection, withdrawal or revocation.

Syllabus area B1(b)

27.9 Convention on International Service Contracts

The UN Convention on Contracts for the International Sale of Goods was produced by UNCITRAL with the help of UNIDROIT, but it was published under the UN's name as it is a binding convention. Both the Model Law on Cross-border Insolvency and the Model Law on International Commercial Arbitration were produced and published by UNCITRAL, for adoption into national laws if desired. There is no Convention on International Service Contracts; the UNCISG relates to contracts for the sale of goods only, not services.

Syllabus area A2(c)

27.10 A model law

The model law may be adopted by states into their national laws but not every state will do so. If adopted the model law will have statutory force, which is more effective than a code of practice. A convention need only be ratified for it to be effective in a state.

Syllabus area C1(c)

27.11 The World Trade Organization

The Dispute Settlement Body is an organ of the WTO. The UN is a forum for settlement of international political disputes, while the EU as a regional trading body is the forum for trade disputes between its members. The ICC operates the International Court of Arbitration.

Syllabus area A2(c)

27.12 To pay the receiving bank for the payment order when the receiving bank accepts it

The sender of the payment order may be the originator or the sending bank. Clearly what they are committed to doing is to make sure that the receiving bank, which will pay on the funds to the beneficiary, receives the funds.

Syllabus area C1(c)

27.13 A counter-offer

A statement of assent from an offeree which contains modifications to the terms of the offer is a counter-offer.

A statement of assent from an offeree cannot be a withdrawal or revocation of an offer, since these relate to the offeror. The fact that there are additions, limitations or other modifications to the terms of the offer means that it is a counter-offer, not an acceptance of the offer.

Syllabus area B1(b)

27.14 When the receiving bank debits the sender's account which it holds

The receiving bank debits (**not** credits) the sender's account which it holds. As this is a credit transfer there is no question of the sender paying the receiving bank in cash or by cheque, although the originator may pay the sending bank in this way if they have no account with the sending bank.

Syllabus area C1(c)

27.15 Against the drawee

The drawee is not liable on the bill until they have accepted it, so it follows that by not accepting it they have denied liability. At this point the bill's holder, who wants payment of the bill, would seek it from the guarantor, the person who originally drew the bill (the drawer), and any persons (endorsers) who were involved in transferring the bill to the holder.

Syllabus area C1(c)

28 Mixed Global Law Questions 2

28.1 Send Lydia a notice of consignment, specifying the goods

Although the contract involves carriage, this does not necessarily mean that Ide should arrange insurance.

The goods are unidentified so there is no rule as to placing the goods at Lydia's disposal where the specific stock was located when the contract was concluded.

The UNCISG does not specify time limits such as ten days for delivery, as goods are varied in their nature; even ten days may be unsuitable for some perishable items, for instance.

Syllabus area B2(ai)

28.2 It may not be an effective acceptance if it reached Patricia after a reasonable time had elapsed

An offer may be accepted orally so it may be an effective acceptance provided there was no fixed timescale, and provided there has not been an unreasonable elapse of time; Osbert's purported acceptance will not be effective in all circumstances. Acceptance may be made orally and need not be confirmed in writing.

Syllabus area B1(b)

28.3 Positive law

National law and written constitutions together are known as positive law.

Syllabus area A1(a)

28.4 By agreement between the parties

The UNCISG states that a contract once formed may be modified by the mere agreement of the parties. It follows that it cannot be modified unilaterally by either buyer or seller.

Syllabus area B1(b)

28.5 Conflict of laws

When individuals relate to each other across national boundaries the problem usually arises that the national laws affecting their relationship conflict in some way ie there is a conflict of laws. International law regulates how nation states relate to each other, rather than how individuals do so. The rule of law is a political term which describes the role played by law in a particular society.

Syllabus area A2(a)

28.6 ICC

UNCITRAL and UNIDROIT are engaged in developing model laws and conventions that apply to contracts, rather than standard contract terms for inclusion in the contract as seen in Incoterms. The WTO supports free trade agreements.

Syllabus area A2(c)

28.7 Before or at the same time as the acceptance would have become effective

Withdrawing acceptance is problematic since a contract is formed when acceptance of an offer becomes effective. It follows then that it can only be withdrawn before it becomes effective. As an acceptance is effective when it reaches the offeror, it follows that an acceptance can only be withdrawn before the offeror receives it.

Syllabus area B1(b)

28.8 Peligo may deliver at any time up until 31 May.

As the contract is silent as to whether the buyer can determine a date within the time period for delivery, the seller may deliver at any time within the time period. What is a reasonable time is effectively ignored as the contract states a time period; a reasonable time would be the default position if the contract had been completely silent on the matter.

Syllabus area B2(ai)

28.9 Statute

While administrative regulations is an important source of law in France, codified statute is the key source. Custom is a minor source of law.

Syllabus area A1(dii)

28.10 A UN Convention

An Act of Parliament is only binding under UK national law, as is the Sunnah in a Sharia law system such as Iran. UN Model Laws are designed to be incorporated into a system of national law. Only UN Conventions can be binding under international law, and then only on states that have ratified them.

Syllabus area A2(b)

28.11 EXW

DDP is the most all-encompassing term for the seller and EXW has the minimum obligations. FOB and CIF have fewer obligations than DDP but have more than EXW.

Syllabus area B1(c)

28.12 A confirmed letter of credit

An irrevocable letter of credit cannot be amended or cancelled without agreement of all the parties, but payment of it has not been confirmed as in the case of a confirmed letter of credit. A standby letter of credit is a fallback in case another means of payment fails, while a revolving letter of credit is administratively easy where the parties have an established course of dealing between them.

Syllabus area C1(e)

28.13 Rules on paying customs duties

Rules relating to instalment contracts and paying the contract price are all incorporated in the main contract, often implied by the UNCISG.

Syllabus area B1(c)

28.14 Letter of comfort

A letter of credit and a bill of exchange are mechanisms for payment of the seller by the buyer. A bill of lading is evidence of the contract of carriage.

Syllabus area C1(e)

28.15 When they place the goods at the buyer's disposal at the seller's place of business when the contract was concluded

Delivery when they hand over the goods to the first carrier suggests the FCA Incoterm is being used. The seller only needs to place the goods at the buyer's disposal; they do not necessarily have to be handed over for delivery to have been effected.

Syllabus area B1(c)

29 Mixed Global Law Questions 3

- 29.1 There is evidence that the seller should have known about the rules when the contract was formed

The three exceptions to the rule are that the same rules apply in the seller's state, that the buyer told the seller about the rules and relied on their expert knowledge and the seller knew about the rules due to special circumstances.

Syllabus area B2(aii)

- 29.2 Legislature

It is the legislature that decides what laws should be passed. The executive makes decisions that put laws into action and the judiciary rules on disputes about laws.

Syllabus area A1(b)

- 29.3 DAT

DAT means delivered at terminal and the seller is responsible for delivering the goods to a named terminal in the country of import. This terminal can be reached by any form of transport such as road, rail or air. FOB, CFR and CIF all relate to contracts for delivery by sea only.

Syllabus area B1(c)

- 29.4 Unexpected circumstances preventing performance could not be avoided or overcome

A change of delivery method, or performance being more expensive or difficult, are not valid exemptions. The circumstances must have been such as to be unavoidable and impossible to overcome.

Syllabus area B2(civ)

- 29.5 The claimant

In a civil law case it is the claimant who sues the defendant. In a criminal trial it is the accused that is brought to court by the prosecution.

Syllabus area A1(c)

- 29.6 FAS

FAS means free alongside ship. The seller discharges their obligations when the goods have been placed alongside the ship in the country of export.

Syllabus area B1(c)

- 29.7 A sale of shares to a stockbroker

The UNCISG does not apply to goods bought for personal, family or household use by the buyer, but if a consignment of goods for personal (cosmetics) or family (school uniforms) use is sold by one trader to another then this is a sale of goods to which UNCISG applies.

Syllabus area B1(a)

- 29.8 Originator

Beneficiary

In an international bank transfer the sender and sender's bank (known as the originator) send funds to a beneficiary.

Payee and drawee are parties involved in an international bill of exchange.

Syllabus area C1(b)

29.9 The holder can seek payment of the bill from the parties liable on it in any order they see fit – True;

A person who fails to give notice of dishonour as required to parties who are entitled to receive it shall pay interest on the amount of the bill – False.

The holder can seek payment of the dishonoured bill from the parties liable on it in any order they see fit.

A person who fails to give notice of dishonour as required to parties who are entitled to receive it shall pay damages, NOT interest.

Syllabus area C1(d)

29.10 Provides evidence that Incoterms have been complied with

Bills of lading provide evidence that the goods have been received by the carrier and of the contract of carriage. It is also a document of title to the goods being shipped. It does not provide evidence that Incoterms have been complied with.

Syllabus area C1(a)

29.11 It must be an unconditional order

It must be dated

It must be for a definite sum of money, not a sum to be determined. It may be payable on demand, or it may be payable at a definite time.

Syllabus area C1(d)

29.12 Proceedings continue but the arbitral tribunal should not take the failure to submit the statement of defence as an admission of guilt

Where a statement of defence is not produced, proceedings continue but the tribunal should not take the failure to be an admission of guilt.

Syllabus area A3(c)

29.13 Letter of comfort

The statement describes a letter of comfort. A letter of credit is a method of payment. The other options are just distractors.

Syllabus area C1(a)

29.14 It may not be an effective acceptance if it reached Nelly after a reasonable time had elapsed

An offer may be accepted orally so it may be an effective acceptance provided there was no fixed timescale, and provided there has not been an unreasonable elapse of time; Granco's purported acceptance will not be effective in all circumstances. Acceptance may be made orally and need not be confirmed in writing.

Syllabus area B1(b)

29.15 Passage of risk

ICC Incoterms are concerned with issues such as passage of risk and costs of insurance, delivery and import/export duties. They are not concerned with quality and quantity of goods or termination of contract.

Syllabus area B1(c)

30 Mixed Questions 1 (Specimen exam)

- 30.1 The legal reason for deciding the case
Ratio decidendi is the legal reason for deciding the case.
Syllabus area A1(di)
- 30.2 Arranging for an export licence if required
In an FOB contract the seller is responsible for arranging for an export licence if required.
Syllabus area B1(c)
- 30.3 Risk passes to the buyer
A bill of lading is evidence that risk has passed to the buyer.
Syllabus area C1(a)
- 30.4 A private limited company
Ltd indicates that an organisation is a private limited company.
Syllabus area D4(h)
- 30.5 Within one year of its date of issue
An on-demand international bill of exchange must be presented within one year of its date of issue.
Syllabus area C1(d)
- 30.6 More than 50% of those actually voting
To be passed, all ordinary resolutions require the approval of more than 50% of those actually voting.
Syllabus area F3(b)
- 30.7 Harmonisation
Conciliation and mediation are both forms of alternative dispute resolution.
Syllabus area A3(a)
- 30.8 A bill of exchange, A letter of credit
Bills of lading are transportation documents. Letters of comfort are not a method of payment.
Syllabus area C1(a/e)
- 30.9 Modification
Modification does not terminate an offer. Withdrawal, revocation and rejection will terminate an offer.
Syllabus area B1(b)
- 30.10 They are paid when profits are available for that purpose
Cumulative dividends are paid when profits are available to pay them.
Syllabus area E1(b)
- 30.11 When it reaches the offeror within a reasonable time
Acceptance must reach the offeror within a reasonable time.
Syllabus area B1(b)
- 30.12 Codes
Civil law codes are the primary source of law in civil law systems.
Syllabus area A1(dii)

30.13 Quran

The Quran is the primary source of Sharia law.

Syllabus area A1(diii)

30.14 The arbitration agreement expressly provided that no appeal could be made to a court.

Courts can refuse to hear an appeal if it is not consistent with the laws of the country or are against public policy.

Syllabus area A3(e)

30.15 Arranging for an import licence if required

Under a CIF contract the buyer is responsible for arranging for an import licence if required.

Syllabus area B1(c)

31 Mixed Questions 2 (Specimen exam)

31.1 Encouraging someone to engage in insider dealing, Passing on inside information

It is an insider dealing offence to encourage another to engage in insider dealing or pass on inside information. Failing to report is a money laundering offence.

Syllabus area H1(a)

31.2 They are responsible for filing the LLP's accounts, They have limited liability

Designated members are responsible for the publicity requirements of the LLP and like all members they have limited liability.

Syllabus area D2(a)

31.3 An ordinary resolution with special notice

An ordinary resolution with special notice is required to remove a director.

Syllabus area F1(b)

31.4 A quotation of price

Statements of intent and agreements are not offers and are not sufficient to form a contract.

Syllabus area B1(b)

31.5 They may never be revoked, They may be withdrawn as long as this is done at the same time as the offer reaches the offeree

Irrevocable offers cannot be revoked but can be withdrawn if the withdrawal reaches the offeree at the same time as the offer.

Syllabus area B1(b)

31.6 The shares may not be offered to the public

Ltd indicates a private company and such a company may not trade its shares publicly.

Syllabus area D4(h)

31.7 Layering, Integration

Out of the options, only layering and integration are phases of money laundering.

Syllabus area H1(c)

31.8 When the goods are transferred to the first carrier

Risk passes when the goods are transferred to the first carrier.

Syllabus area B2(d)

31.9 It settles disputes between individuals

The WTO does not become involved in disputes between individuals.

Syllabus area A2(c)

31.10 They are effective when they reach the offeree

Offers are effective when they reach the offeree.

Syllabus area B2(b)

31.11 Ordinary shares

Only ordinary shareholders have the right to share in surplus capital.

Syllabus area E1(b)

31.12 Endorsed letter of credit

Endorsed is not a type of letter of credit.

Syllabus area C1(e)

31.13 It may be withdrawn before the offer reaches the offeree, It may be withdrawn at the same time as the offer reaches the offeree

Offers can only be withdrawn before or at the same time as they reach the offeree.

Syllabus area B1(b)

31.14 The issuing bank represents the buyer

A basic letter of credit is issued by the issuing bank at the request of the buyer. Therefore the issuing bank represents the buyer.

Syllabus area C1(e)

31.15 The company has altered its primary business within the first 12 months

Trading without a trading certificate for 12 months, not started to trade within 12 months and having suspended trading for 12 months are all grounds for liquidating a public company.

Syllabus area G1(b)

32 Mixed Questions 3 (Specimen exam)

32.1 Revolving letter of credit

Revolving letters of credit are always open.

Syllabus area C1(e)

32.2 Creativity

Codification, certainty and comprehensibility are central attributes to civil law systems.

Syllabus area A1(dii)

32.3 Fit for unusual use not known by the seller

Goods do not have to be fit for unusual purposes that are not known to the seller.

Syllabus area B2(aii)

32.4 The company

Shareholders are liable to the company for unpaid share capital.

Syllabus area E1(b)

- 32.5 The parent company of a company in financial difficulty
Letters of comfort are issued by parent companies.
Syllabus area C1(e)
- 32.6 Beyond reasonable doubt
The standard of proof in a criminal case is beyond reasonable doubt.
Syllabus area A1(c)
- 32.7 They must have a minimum of two members
Like all partnerships, LLPs must have at least two members.
Syllabus area D2(a)
- 32.8 Where the agent fails to disclose that they are acting as such
Agents are liable if they intend to take the benefit of a contract and they fail to disclose they are acting as agent, or if they act in their own interest whilst claiming to be an agent.
Syllabus area D1(d)
- 32.9 A special resolution
Special resolutions require a 75% majority.
Syllabus area F3(b)
- 32.10 The agreement is avoidable
Where there is fundamental breach the contract is avoidable.
Syllabus area B2(ci)
- 32.11 Shareholders of the company
Only the shareholders of a company may petition for its just and equitable liquidation.
Syllabus area G1(a)
- 32.12 The prohibition of charging interest
Riba refers to the unlawful charging of interest.
Syllabus area A1(diii)
- 32.13 Raw materials to be used in subsequent production
Shares, ships and aircraft are outside the scope of the Convention.
Syllabus area B1(a)
- 32.14 ICA
The ICA is the International Court of Arbitration.
Syllabus area A3(b)
- 32.15 The members of the company
The company's board, creditors and the Secretary of State may petition for the compulsory liquidation on the grounds of insolvency.
Syllabus area G1(b)

33 Mixed Multiple Task Questions 1 (Specimen exam)

- 33.1 (a) They compensate the innocent party for any financial loss.
They put the parties in the position they would have been in had the contract been performed.
- (b) It lies with the party who suffers the breach
It reduces damages
- (c) \$0
- 33.2 (a) She has full liability for partnership debts
- (b) He remains liable to new customers who knew he was a member of the partnership, unless he declared his withdrawal
- (c) Eve, Dan and Clare
- 33.3 (a) Debentures secured by a fixed charge
- (b) Preference shares
- (c) Ordinary shares
- 33.4 (a) Ger Shadow director
Kim De facto director
- (b) They owe fiduciary duties to the company
- 33.5 (a) Fraudulent trading Both civil and criminal
Wrongful trading Civil only
- (b) Fran Wrongful trading (s 214 Insolvency Act 1986)
Gram Fraudulent trading (s 213 Insolvency Act 1986)

Mock exams

ACCA Applied Skills

Corporate and Business Law (LW) (GLO)

Mock Exam 1

Questions	
Time allowed	2 hours
This exam is divided into two sections	
Section A	ALL 45 questions are compulsory and MUST be attempted
Section B	ALL 5 questions are compulsory and MUST be attempted

Please note that it is not possible to predict question topics in an examination of this nature. We have based the content of this Mock Exam on our long experience of the ACCA exams. We do not claim to have any endorsement of the question types or topics from either the examining team or the ACCA and we do not guarantee that either the specific questions or the general areas that are featured here will necessarily be included in the exams, in part or in whole.

We do not accept any liability or responsibility to any person who takes, or does not take, any action based (either in whole or in part and either directly or indirectly) upon any statement or omission made in this book. We encourage students to study all topics in the ACCA syllabus and this Mock Exam is intended as an aid to revision only.

**DO NOT OPEN THIS EXAM UNTIL YOU ARE READY TO START UNDER
EXAMINATION CONDITIONS**

Section A – ALL 45 questions are compulsory and MUST be attempted

- 1 Which of the following is a rule of statutory interpretation under the English legal system that states that a word draws meaning from the other words around it?
- ☐ Purposive rule
 - ☐ Literal rule
 - ☐ Noscitur a sociis rule
- (1 mark)**
-
- 2 Joan holds 100 shares in Box Co. The directors of Box Ltd have announced that she will be granted 1 share for every 5 shares that she holds. The shares will be issued fully paid up.
- What is the name given to such an allotment of shares?
- ☐ Rights issue
 - ☐ Bonus issue
 - ☐ Capital issue
 - ☐ Special issue
- (2 marks)**
-
- 3 In the context of the English legal system, which of the following equitable remedies means that the defendant should abstain from wrongdoing?
- ☐ Specific performance
 - ☐ Rectification
 - ☐ Injunction
- (1 mark)**
-
- 4 Which of the following international organisations creates model laws and conventions that help regulate international trade?
- ☐ World Trade Organization
 - ☐ International Chamber of Commerce
 - ☐ Organisation for Economic Co-operation and Development
 - ☐ UN Commission on International Trade Law
- (2 marks)**
-
- 5 Which of the following is a condition that must be met in order for a principal to ratify the actions of an agent?
- ☐ Ratification must occur immediately after the contract is formed.
 - ☐ Ratification must be agreed with the third party.
 - ☐ The principal must have existed when the contract was formed.
- (1 mark)**
-
- 6 Which of the following is the concept of conciliation under Sharia law?
- ☐ Takhim
 - ☐ Solh
 - ☐ Wasta
- (1 mark)**
-
- 7 In the event of an unlimited liability partnership being terminated, which of the following liabilities are repaid next, once all external debts have been settled?
- ☐ Partners' loan advances
 - ☐ Partners' capital contributions
 - ☐ Partners' share of profit
- (1 mark)**
-

- 8 A declaration of solvency is required to commence which of the following?
- ☐ A members' voluntary liquidation
 - ☐ A creditors' voluntary liquidation
 - ☐ A compulsory liquidation
 - ☐ An administration
- (2 marks)**
-
- 9 Which of the following is a ground for disqualifying a director under the model articles of association?
- ☐ Breach of fiduciary duty
 - ☐ Failure to meet a statutory duty
 - ☐ Breaking the terms of their service contract
 - ☐ Becoming bankrupt
- (2 marks)**
-
- 10 Which of the following companies qualify for exemption from audit?
- ☐ A public company with turnover of £1 million and a balance sheet total of £2 million
 - ☐ A private company with turnover of £11 million and a balance sheet total of £6 million
 - ☐ A dormant company
- (1 mark)**
-
- 11 Under the UNCITRAL Model Law on International Commercial Arbitration, what is the minimum number of arbitrators that may sit on an arbitral tribunal?
- ☐ One
 - ☐ Three
 - ☐ Five
- (1 mark)**
-
- 12 Under the UN Model Law on Contracts for the International Sale of Goods, when does an offer made through the post become effective?
- ☐ When the letter is posted
 - ☐ When the letter is delivered to the recipient
 - ☐ When the recipient reads the letter
- (1 mark)**
-
- 13 Under the UN Model Law on Contracts for the International Sale of Goods, what is the effect of a counter-offer on the original offer?
- ☐ Acceptance of the original offer as it stands
 - ☐ Acceptance of the original offer with new terms introduced
 - ☐ Rejection of the original offer
 - ☐ No effect on the original offer
- (2 marks)**
-
- 14 Holding companies may give creditors of their subsidiary companies a 'letter of comfort' regarding the ability of the subsidiary to pay its debts.
- What is the legal effect of a 'letter of comfort'?
- ☐ It is legally binding on the holding company only
 - ☐ It is legally binding on the subsidiary company only
 - ☐ It is legally binding on the holding company and subsidiary company
 - ☐ It is not legally binding on the holding company or subsidiary company
- (2 marks)**
-
- 15 Under which of the following ICC Incoterms is the buyer required to collect their goods from the seller's place of business?
- ☐ FCA
 - ☐ DAT
 - ☐ EXW
 - ☐ DDP
- (2 marks)**
-

- 16 In order for an injured party to claim damages under the UN Convention on Contracts for the International Sale of Goods, which of the following must the injured party do?
- ☐ Avoid the contract
 - ☐ Mitigate their loss
 - ☐ Allow the other party extra time to perform their obligations
- (1 mark)
-
- 17 Which of the following is a document used in an international sale of goods that provides evidence of title to the goods being sold?
- ☐ Bill of lading
 - ☐ Bill of exchange
 - ☐ Bill of rights
- (1 mark)
-
- 18 In relation to the general rules of statutory interpretation under the English legal system, which of the following is the rule that states 'to express one thing is by implication to exclude anything else'?
- ☐ Expressio unius est exclusio alterus
 - ☐ Eiusdem generis
 - ☐ In pari materia
- (1 mark)
-
- 19 In which of the following legal systems is Riba the concept of unlawful gain?
- ☐ English common law
 - ☐ French civil law
 - ☐ German civil law
 - ☐ Sharia law
- (2 marks)
-
- 20 Which of the following international organisations has the harmonisation of international private law as one of its purposes?
- ☐ UNCITRAL
 - ☐ UNIDROIT
 - ☐ OECD
- (1 mark)
-
- 21 Under the UN Model Law on Contracts for the International Sale of Goods, at which point is an email acceptance to an offer effective?
- ☐ When the email is written
 - ☐ When the email is sent
 - ☐ When the email reaches the offeree
 - ☐ When the email is read by the offeree
- (2 marks)
-
- 22 Which of the following contractual terms are **NOT** covered by ICC Incoterms?
- ☐ Price
 - ☐ Insurance
 - ☐ Carriage
 - ☐ Import costs
- (2 marks)
-
- 23 Which of the following is a conformity requirement for goods supplied under the UN Convention on Contracts for the International Sale of Goods?
- ☐ Goods should be fit for any purpose that the buyer may put them to
 - ☐ Goods must conform to any relevant regulations in the buyer's state
 - ☐ Goods must be fit for any purpose made known to the seller when the contract was formed
- (1 mark)
-

- 24 Jan sold a consignment of goods to Kim in a contract under the UN Convention on Contracts for the International Sale of Goods. The contract was concluded when the goods were in transit between Jan's factory and Jan's warehouse. Kim agreed to collect the goods from Jan's warehouse. No arrangement was made as to when risk in the goods would pass from Jan to Kim.

Under the UN Convention, at which point did risk in the goods pass from Jan to Kim?

- ☐ When the goods left Jan's factory
- ☐ When the contract was concluded
- ☐ When the goods arrived at Jan's warehouse
- ☐ When Kim collected the goods from Jan's warehouse

(2 marks)

-
- 25 In a company with more than one member, what is the quorum for a class meeting?

- ☐ Two persons who hold at least one-third of the nominal value of the shares in the class
- ☐ Three persons who hold at least one-half of the nominal value of the shares in the class
- ☐ Five persons who hold at least three-quarters of the nominal value of the shares in the class **(1 mark)**

-
- 26 Where a compulsory liquidation order has been granted, which of the following is true?

- ☐ An insolvency practitioner is appointed as liquidator
- ☐ All employees are automatically dismissed
- ☐ Any legal proceedings against the company that are in progress at the time of the liquidation order are allowed to continue
- ☐ The company's directors continue to run the company whilst the liquidation process is ongoing

(2 marks)

-
- 27 Under the English system of courts, which court only has a civil law jurisdiction?

- ☐ Magistrates' Court
- ☐ County Court
- ☐ Crown Court
- ☐ High Court

(2 marks)

-
- 28 Which of the following is an advantage of court-based adjudication over alternative dispute resolution?

- ☐ It is a faster method of resolving a dispute
- ☐ The dispute is heard in private rather than in public
- ☐ Judicial precedent provides guidance for future disputes

(1 mark)

-
- 29 Which of the following is a right of the holder of a debenture that is secured by a fixed charge?

- ☐ Payment of a company dividend
- ☐ To vote at the company's general meeting
- ☐ To vote on company resolutions that affect them as a debentureholder
- ☐ To prevent the company from selling the asset secured by the charge

(2 marks)

-
- 30 What is the name of the party who brings a dispute to arbitration under the UNCITRAL Model Law on International Commercial Arbitration?

- ☐ Defendant
- ☐ Plaintiff
- ☐ Claimant

(1 mark)

- 31 Under the UN Convention on Contracts for the International Sale of Goods, unless it is agreed otherwise, at which point must the buyer pay for the goods?
- ☐ When the contract is concluded
 - ☐ When the goods are in transit from the seller
 - ☐ When the goods arrive at the buyer's place of business
 - ☐ When the buyer has examined the goods following their delivery
- (2 marks)**
-

- 32 Liam was convicted of a criminal offence by a Magistrates' Court in the English legal system. If Liam has grounds to appeal, which court will the case move to next?
- ☐ Crown Court
 - ☐ High Court
 - ☐ Court of Appeal
 - ☐ Supreme Court
- (2 marks)**
-

- 33 Which of the following describes the liability of a sole trader for the debts of the business?
- ☐ Unlimited liability
 - ☐ Limited by the amount they guarantee to pay on winding up
 - ☐ Limited by the amount of capital in the business
- (1 mark)**
-

- 34 The latest accounts of Tsar Co showed that the company had profits available for distribution of \$10,000. Mick (the sole director of Tsar Co) negligently misinterpreted the accounts and authorised a dividend payment of \$20,000. Joan, Mick's wife and shareholder of Tsar Co, saw the accounts and knew the dividend was unlawful. The other shareholders did not see the accounts.
- Which of the following parties are liable for the unlawful dividend?
- ☐ Mick only
 - ☐ Joan only
 - ☐ Mick and Joan only
 - ☐ Mick, Joan and all the other shareholders
- (2 marks)**
-

- 35 An administrator of a company has a number of powers that may or may not require the permission of the court to exercise.
- Which of the following is a power that usually requires court approval to exercise?
- ☐ Appoint a director
 - ☐ Call a meeting of members
 - ☐ Make a payment to a preferential creditor
 - ☐ Make a payment to an unsecured creditor
- (2 marks)**
-

- 36 LT is an accountant who works for Tapa Co, a company owned by SP. LT has devised a scheme where Tapa Co can illegally disguise certain revenues so that the company's tax charge is reduced. Any tax that the scheme saves is paid to SP as a dividend.
- Which **TWO** offences has LT committed?
- ☐ Tipping off
 - ☐ Failure to prevent
 - ☐ Laundering
 - ☐ Failure to report
- (2 marks)**
-

- 37 The UN Convention on Contracts for the International Sale of Goods sets out third-party rights with regard to intellectual property.

Which **TWO** of the following are examples of intellectual property?

- ☐ Patents
- ☐ Office buildings
- ☐ Commercial raw materials
- ☐ Copyrights

(2 marks)

- 38 Which of the following will the Registrar of Companies hold on a company's file?

- ☐ Copies of all ordinary resolutions
- ☐ Certificate of incorporation
- ☐ Minutes from board meetings

(1 mark)

- 39 In a contract for the international sale of goods where a bill of exchange is used, which of the following parties is the payee?

- ☐ The seller
- ☐ The buyer
- ☐ The buyer's bank

(1 mark)

- 40 Which **TWO** of the following are elements of a company's constitution?

- ☐ Memorandum of association
- ☐ Articles of association
- ☐ Company resolutions
- ☐ Register of members

(2 marks)

- 41 Which **TWO** of the following are criminal offences that directors of a company may commit as a consequence of their company being insolvent?

- ☐ Acting as a director whilst disqualified
- ☐ Making a false declaration of solvency
- ☐ Wrongful trading
- ☐ Abuse of position

(2 marks)

- 42 Which of the following statements regarding judges in Sharia law is **NOT** correct?

- ☐ Judges may create law
- ☐ Judges may conduct judicial review
- ☐ Judges may interpret the law
- ☐ Judges are clerics

(2 marks)

- 43 In which of the following economic systems do decisions regarding resource allocation have **NO** input from government?

- ☐ Planned economy
- ☐ Market economy
- ☐ Mixed economy

(1 mark)

- 44 Which of the following statements is correct under the UN Convention on Contracts for the International Sale of Goods, where a seller delivers goods early that do not conform to the requirements of the contract?
- ☐ The buyer can claim damages immediately
 - ☐ The buyer can reduce the price paid for the goods immediately
 - ☐ The seller may correct the lack of conformity without any liability within the original time period
 - ☐ The seller may correct the lack of conformity within the time period but is liable to the buyer for damages
- (2 marks)**
-

- 45 In which **TWO** of the following circumstances may a party have recourse against an arbitral award made under the UNCITRAL Model Law on International Commercial Arbitration?
- ☐ The composition of the arbitral tribunal was incorrect
 - ☐ The subject of the dispute is not capable of being settled by arbitration under the laws of the state in which it is heard
 - ☐ The award creates undue hardship on the defendant
 - ☐ The claimant did not suffer any financial loss
- (2 marks)**
-

(Total = 70 marks)

Section B – ALL 5 questions are compulsory and MUST be attempted

1 Warren Bros Co, a wholesaler based in Zimland, entered into a contract with Fishy Company Co, a retailer in Wimland, for the supply of 10,000 tonnes of fish. The UN Convention on Contracts for the International Sale of Goods applies to the contract.

The contract did not refer to risk. The fish was shipped by boat to Warren Bros. When the boat arrived, the chief buyer for Warren Bros had not arrived and so the shipment was unloaded and left for collection at the port. The shipment was clearly marked for Warren Bros. When the chief buyer for Warren Bros attended the port to inspect the shipment. He found that it did not meet the requirements of quality stated in the contract and decided to reject it.

(a) Which of the following statements correctly describes Warren Bros Co's legal obligation in respect of examining the fish?

- ☐ Warren Bros Co had no legal obligation to examine the fish
- ☐ Warren Bros Co was legally obliged to examine the fish as soon as possible after delivery
- ☐ Warren Bros Co was legally obliged to examine the fish before they were unloaded from the boat
- ☐ Warren Bros Co was legally obliged to examine the fish once the shipment was back at the company's storage facility (2 marks)

(b) Which of the following statements correctly describes Warren Bros Co's legal obligation in respect of preserving the fish?

- ☐ Warren Bros Co has no legal obligation to preserve the fish
- ☐ Warren Bros Co is legally obliged to take all steps necessary to preserve the fish
- ☐ Warren Bros Co is legally obliged to take reasonable steps to preserve the fish for one business day
- ☐ Warren Bros Co is legally obliged to take reasonable steps to preserve the fish whilst they are at its disposal (2 marks)

(c) Identify whether the following statements concerning possible remedies for Warren Bros Co are true or false.

	True	False
Warren Bros Co may reduce the price of the fish in relation to the non-conformity	<input type="radio"/>	<input type="radio"/>
Warren Bros Co may not declare the contract avoid because of the perishable nature of the goods	<input type="radio"/>	<input type="radio"/>

(2 marks)

(Total = 6 marks)

- 2 Chi, Di and Fi formed an ordinary partnership to run an art gallery. Each of them paid \$100,000 into the business. As Fi had no prospect of raising any more money it was agreed between them that her maximum liability for any partnership debts would be fixed at her original contribution of \$100,000. The partnership agreement specifically restricted the scope of the partnership business to the sale of 'paintings, sculptures and other works of art'. In January 20X0 Chi took \$10,000 from the partnership's bank drawn on its overdraft facility. She had told the bank that the money was to finance a short-term partnership debt but in fact she used the money to pay for a holiday. In February Di entered into a \$25,000 contract on behalf of the partnership to buy some books, which she hoped to sell in the gallery.

(a) Which of the following partners are liable to repay the overdraft created by Chi?

- ☐ Chi only
- ☐ Chi and Di only
- ☐ Di and Fi only
- ☐ Chi, Di and Fi

(2 marks)

(b) Did Di have any authority to purchase the books?

- ☐ No – she had no authority
- ☐ Yes – she had actual authority
- ☐ Yes – she had express authority
- ☐ Yes – she had apparent authority

(2 marks)

(c) Which of the following statements about Fi's liability for the partnership debts is correct?

- ☐ Fi has no liability for the partnership's debts
- ☐ Fi is only liable to third parties up to \$100,000
- ☐ Fi is jointly liable for all partnership debts and cannot claim back any amount from Chi and Di
- ☐ Fi is jointly liable for all partnership debts but may claim back any amount she is liable for over \$100,000 from Chi and Di

(2 marks)

(Total = 6 marks)

- 3 In 20X0 Fay, Gus and Het formed a private limited company, FGH Co, to carry out technological research. They each took 100 shares in the company and each of them became a director in the company.

In January 20X2 Fay admitted that she had been working with a much larger rival company, Ix Inc, and that she had passed on some of FGH Co's research results to Ix Inc in return for substantial payment. Fay maintains that she has done no harm, as FGH Co was not capable of using the information. Nonetheless, Gus and Het are extremely angered by Fay's actions.

(a) Which **TWO** of the following are consequences to directors who are in breach of their duties to their company?

- ☐ Payment of a fine to the company
- ☐ Restoration of company property
- ☐ Repayment of any remuneration paid to the director
- ☐ Rescission of contract (where the director did not disclose an interest)

(2 marks)

(b) Identify whether Fay acted in breach of the following duties of a director.

	Duty breached	Duty not breached
Duty to avoid conflict of duty and personal interest	<input type="radio"/>	<input type="radio"/>
Duty not to accept benefits from third parties	<input type="radio"/>	<input type="radio"/>

(2 marks)

- (c) Identify the type of resolution and meeting notice period that Gus and Het would need to use in order to correctly remove Fay as a director.

	Ordinary notice	Special notice
Ordinary Resolution	<input type="radio"/>	<input type="radio"/>
Special Resolution	<input type="radio"/>	<input type="radio"/>

(2 marks)

(Total = 6 marks)

- 4 Two years ago Fin inherited some money and decided to invest the money in company shares.

At that time he heard that Heave Co was badly in need of additional capital and that the directors had decided that the only way to raise the needed money was to offer fully paid up \$1 shares to new members at a discount price of 60c per share. Fin thought the offer was too good to miss and he subscribed and paid for 20,000 new shares on this basis. However, Heave Co has since gone into insolvent liquidation, owing a considerable sum of money to its unsecured creditors.

With the remaining money of his investment Fin subscribed for 10,000 shares in Irk Inc. Although they were nominally \$1 shares, he was required to pay \$2 for each share he subscribed for. The shares are currently trading at \$2.50 per share.

- (a) Which of the following describes Fin's liability for Heave Co's debts?

- ☐ Jointly liable for all the company's debts with the other shareholders
- ☐ No liability because he has already paid for his shares in full
- ☐ Liable in full for \$8,000 (40c per share × 20,000 shares owned)
- ☐ Liable up to \$8,000 (40c per share × 20,000 shares owned) depending on the amount Heave Co owes

(2 marks)

- (b) Identify which of the following statements concerning Fin and Irk Inc are true or false.

	True	False
Irk Inc must transfer the excess Fin paid over the nominal value of the shares to a general reserve	<input type="radio"/>	<input type="radio"/>
Irk Inc is not permitted to pay the excess Fin paid over the nominal value of the shares as a dividend	<input type="radio"/>	<input type="radio"/>
Irk Inc is permitted to use the excess Fin paid over the nominal value of the shares to fund a bonus issue	<input type="radio"/>	<input type="radio"/>
Irk Inc is permitted to repay the excess Fin paid over the nominal value of the shares back to him as a cash payment	<input type="radio"/>	<input type="radio"/>

(4 marks)

(Total = 6 marks)

- 5 Jaz Inc is listed on the London Stock Exchange. Kip works for Jaz Inc as an accountant. Whilst drawing up the annual accounts, Kip noticed that Jaz Inc's profits were better than anyone could have expected. As a consequence of this knowledge, he bought shares in Jaz Inc before its good results were announced. He made a substantial profit on the share dealing. Kip also told his friend Lu about the results before they were announced. Lu also bought shares in Jaz Inc.

(a) Which **TWO** of the following are elements of the definition of inside information?

- ☐ Relating to any securities
☐ Being specific or precise
☐ Made public
☐ Likely to have a significant effect on the price of securities
- (2 marks)**

(b) Identify which of the following offences Kip and Lu have committed.

	Trading using inside information	Encouraging another to deal	Both offences
Kip	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lu	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

(4 marks)

(Total = 6 marks)

(Total = 30 marks)

Answers

**DO NOT TURN THIS PAGE UNTIL YOU HAVE
COMPLETED THE MOCK EXAM**

SECTION A

1 Noscitur a sociis rule

Noscitur a sociis means that words draw meaning from other words around them. The literal rule states that words should be given their plain ordinary meaning. The purposive rule states that words are interpreted in the context and purpose of the legislation.

Syllabus area A1(di)

2 Bonus issue

The allotment of additional, fully paid up shares in proportion to the holding of each shareholder is a bonus issue. A rights issue requires the shareholder to pay for the extra shares issued.

Syllabus area E1(c)

3 Injunction

An injunction prevents the defendant from wrongdoing. Specific performance means that the defendant must do what they agreed to do. Rectification means that a document is amended to reflect the parties' true intentions.

Syllabus area A1(di)

4 UN Commission on International Trade Law

The UN Commission on International Trade Law (UNCITRAL) creates model laws and conventions that help regulate international trade. The other options are international organisations but they do not fulfil this role.

Syllabus area A2(c)

5 The principal must have existed when the contract was formed

To ratify the contract, the principal must have existed when it was formed and ratification must take place within a reasonable period of time. Ratification must be communicated to the third party, but their agreement to the ratification is not required.

Syllabus area D1(b)

6 Solh

Under Sharia law, Solh is the concept of conciliation, Takhim is arbitration and Wasta is mediation.

Syllabus area A3(a)

7 Partners' loan advances

After external debts have been settled, loan advances from partners are repaid next followed by partners' capital contributions and then any profits are shared out.

Syllabus area D2(e)

8 A members' voluntary liquidation

A declaration of solvency is required to commence a members' voluntary liquidation. It is not required in the other options.

Syllabus area G1(a)

9 Becoming bankrupt

Out of the options only becoming bankrupt is a ground for disqualifying a company director under the model articles.

Syllabus area F1(b)

- 10 A dormant company
Dormant companies are exempt from audit. Public companies are never exempt from audit. Private companies are exempt from audit if they have turnover of less than £10.2 million and a balance sheet total of less than £5.1 million.
Syllabus area F2(b)
- 11 One
Under the Model Law, the parties may agree to use a sole arbitrator.
Syllabus area A3(d)
- 12 When the letter is delivered to the recipient
An offer by letter is effective once it is delivered to the offeree.
Syllabus area B1(b)
- 13 Acceptance of the original offer with new terms introduced
Under the Model Law, a counter-offer has the effect of introducing new terms into the original offer and these new terms will form part of the acceptance as long as the offeror does not object.
Syllabus area B1(b)
- 14 It is not legally binding on the holding company or subsidiary company
A 'letter of comfort' is not legally binding on the holding company or subsidiary company.
Syllabus area C1(e)
- 15 EXW
EXW means 'ex-works'. The buyer collects the goods from the seller's place of business.
Syllabus area B1(c)
- 16 Mitigate their loss
Injured parties are required to mitigate their losses in order to claim damages. Damages are always available regardless of any other claims they may make – such as avoiding the contract or allowing the other party extra time to perform.
Syllabus area B2(cii)
- 17 Bill of lading
One of the functions of a bill of lading is to provide evidence of title to the goods being sold. A bill of exchange is a method of payment for the goods.
Syllabus area C1(a)
- 18 Expressio unius est exclusio alterus
Expressio unius est exclusio alterus means that to express one thing is by implication to exclude anything else. Eiusdem generis means that the meaning of general words is limited to the specific words that precede them. In pari materia means that if the statute forms part of a series on a similar subject, the court may look to the interpretation of previous statutes on the assumption that Parliament intended the same thing.
Syllabus area A1(i)
- 19 Sharia law
Riba is the concept of unlawful gain and is a principle of Sharia law.
Syllabus area A1(diii)

- 20 UNIDROIT
An objective of UNIDROIT (the International Institute for the Unification of Private Law) is the harmonisation of international private law.
Syllabus area A2(c)
- 21 When the email reaches the offeree
Under the Model Law, acceptance by instantaneous communication is effective when it reaches the offeree.
Syllabus area B1(b)
- 22 Price
Price is not covered by Incoterms. Incoterms cover transportation issues such as insurance, carriage and import costs.
Syllabus area B1(c)
- 23 Goods must be fit for any purpose made known to the seller when the contract was formed
Under CISG, goods must be fit for any purpose that goods of the same description would ordinarily be used, for any purpose made known to the seller when the contract was formed and only regulations in the buyer's state that the seller was informed of when the contract was formed must be complied with.
Syllabus area B2(a)(ii)
- 24 When the contract was concluded
In contracts for goods sold in transit, risk passes at the time the contract is concluded.
Syllabus area B2(d)
- 25 Two persons who hold at least one-third of the nominal value of the shares in the class
The quorum for a class meeting is two members who hold at least one-third of the nominal value of the shares in the class.
Syllabus area F3(c)
- 26 All employees are automatically dismissed
Once a liquidation order has been granted all employees are automatically dismissed. The official receiver is appointed as liquidator and runs the company during the liquidation process. Existing legal proceedings are halted and new proceedings may not commence.
Syllabus area G1(b)
- 27 County Court
County Courts only have civil jurisdiction. The other options have criminal jurisdiction.
Syllabus area A3(a)
- 28 Judicial precedent provides guidance for future disputes
Court-based adjudication involves the creation of judicial precedent. This means that parties involved in future disputes can see how a similar past case was decided. This enables them to come to a resolution without the time and expense of going to court. The other options are advantages of alternative dispute resolution over court-based adjudication.
Syllabus area A3(a)
- 29 To prevent the company from selling the asset secured by the charge
Debentureholders do not have the right to dividends, to attend company meetings or to vote on company resolutions. However, if the debenture is secured by a fixed charge, they may prevent the company from selling the asset that the charge is secured on.
Syllabus area E2(b)

- 30 Claimant
Under the Model Law, a claimant brings a claim against a defendant.
Syllabus area A3(c)
- 31 When the buyer has examined the goods following their delivery
Under the UN Convention, a buyer is not obliged to pay for the goods until they have examined them.
Syllabus area B2(bi)
- 32 High Court
Appeals from a Magistrates' Court are heard by the High Court (Queen's Bench Division).
Syllabus area A3(a)
- 33 Unlimited liability
A sole trader has unlimited liability for the debts of the business.
Syllabus area D3(a)
- 34 Mick and Joan only
Directors who misinterpret the accounts will be liable for an unlawful dividend. Relief may be granted if the mistake was honest and reasonable, but this is not the case here because the misinterpretation was due to negligence. Only shareholders who know the dividend was unlawful are liable.
Syllabus area D3(b)
- 35 Make a payment to an unsecured creditor
An administrator usually requires court approval to make payments to unsecured creditors. The other actions do not require court approval.
Syllabus area G1(e)
- 36 Laundering
Failure to report
LT has assisted SP in laundering money from a criminal offence (tax evasion) and is also liable for failing to report SP's money laundering activities.
Syllabus area H1(c)
- 37 Patents
Copyrights
Examples of intellectual property include trade marks, patents and copyrights.
Syllabus area B2(a)
- 38 Certificate of incorporation
As well as sending a certificate of incorporation to the company, the Registrar will keep a copy on the company's file. Not all ordinary resolutions will be filed. Copies of board minutes are not sent to the Registrar.
Syllabus area D4(d)
- 39 The seller
The payee is the party to whom payment is to be made. Therefore the seller is the payee.
Syllabus area C1(d)

- 40 Articles of association
Company resolutions
A company's constitution consists of its articles of association and any resolutions or agreements that it makes.

Syllabus area D4(e)
- 41 Making a false declaration of solvency
Wrongful trading
All the offences may be committed by directors, but only making a false declaration of solvency and wrongful trading are a consequence of insolvency – ie they can only be committed by directors of insolvent companies.

Syllabus area A1(b)
- 42 Judges may create law
In Sharia law, the law is set out in the Quran and may not be altered. Judges are clerics who may interpret the law and conduct judicial reviews into whether statutes are consistent with Sharia law.

Syllabus area A1(diii)
- 43 Market economy
In a market economy, decisions regarding resource allocation are left to the forces of supply and demand. A government has an input in planned and mixed economies.

Syllabus area A1(a)
- 44 The seller may correct the lack of conformity within the time period but is liable to the buyer for damages
If the seller performs their obligations early, but does not conform to the requirements of the contract, they may correct the lack of conformity within the original time period without liability.

Syllabus area B2(a)
- 45 The composition of the arbitral tribunal was incorrect.
The subject of the dispute is not capable of being settled by arbitration under the laws of the state in which it is heard.
A party may have recourse where the tribunal was not composed correctly or if the subject matter of the dispute is not capable of being settled by arbitration in the state in which it is heard. The other options are not recourse circumstances listed by the Model Law.

Syllabus area A3(e)

SECTION B

- 1
 - (a) Warren Bros Co was legally obliged to examine the fish as soon as possible after delivery. If it is a contract involving carriage (which this appears to be, as the goods have been shipped to Warren Bros), then the buyer is required to examine the goods as soon as possible after their arrival. Therefore, Warren Bros has clearly fulfilled this obligation by attending the port to examine the goods on their arrival.
 - (b) Warren Bros Co is legally obliged to take reasonable steps to preserve the fish whilst they are at its disposal. As the buyer, Warren Bros Co has a duty to take reasonable steps to preserve the fish after it has rejected them, but whilst they are at its disposal.
 - (c) Warren Bros Co may reduce the price of the fish in relation to the non-conformity – true
Warren Bros Co may not declare the contract void because of the perishable nature of the goods – false

The following remedies are available to Warren Bros Co.
 - Require performance (allocating a different timescale)
 - Declare the contract avoided, as the breach is fundamental
 - Reduce the price in relation to the non-conformity
 - Claim damages
- 2
 - (a) Chi, Di and Fi. Chi has taken money from the firm's bank account to use for a personal holiday. However, as a partner, and in the absence of any specific mention to the contrary in the agreement, she has authority to withdraw money from the bank account. Her action has therefore incurred a debt to a third party that is owed by all three partners, not just herself.
 - (b) Yes – she had apparent authority. The partnership agreement specifies that the partnership should only sell paintings, sculptures and other works of art, so Di did not have actual (or express) authority to undertake this contract. However, the third party is not privy to the partnership agreement so is not aware that the contract is beyond the scope of the partnership. Therefore, Di has apparent authority to undertake the contract on behalf of the other partners.
 - (c) Fi is jointly liable for all partnership debts but may claim back any amount she is liable for over \$100,000 from Chi and Di. Because both the overdraft and contract for the books are binding on the partnership all three partners are personally liable if the partnership does not have sufficient funds to pay them. Fi is jointly liable for the debts of the partnership to the third parties. However as the partnership agreement limits her liability to \$100,000 she will be able to claim any amount over this from Chi and Di.
- 3
 - (a) Restoration of company property, Rescission of contract (where the director did not disclose an interest). Consequences for directors that are in breach of their duties include:
 - Damages payable to the company where it has suffered loss
 - Restoration of company property
 - Repayment of any profits made by the director
 - Rescission of contract (where the director did not disclose an interest)
 - (b) Duty to avoid conflict of duty and personal interest – duty breached
Duty not to accept benefits from third parties – duty breached

Under the Companies Act 2006, Fay is in breach of her s 175 duty to avoid conflict of duty and personal interest. This is because she did not disclose her interest in Ix Inc and she obtained a personal advantage through this interest. She is also in breach of her s 176 duty not to accept benefits from third parties when she accepted the substantial payment from Ix Inc for passing on information.
 - (c) Ordinary resolution and special notice. Gus and Het could seek Fay's removal as a director of FGH Co. To do this they would have to provide the company with special (28 day) notice to arrange a general meeting. They would then need to arrange for an ordinary resolution to be voted on at the meeting, calling for her removal. They have sufficient numbers of shares between them to meet the requirements of a simple majority.

- 4 (a) Liable up to \$8,000 ($40c \text{ per share} \times 20,000 \text{ shares owned}$) depending on the amount Heave Co owes. On allotment, it is possible for part of the payment for shares to be deferred to a future date. In such cases the shares are referred to as 'partly paid'. In the event of the shares being transferred, the unpaid capital passes with the shares as a debt payable by the holder at the time when payment becomes due. Fin is therefore liable to Heave Co for the unpaid element of 40p per share. He will therefore have to pay up to a maximum of \$8,000 to Heave Co, depending on the actual liabilities of the company.

- (b) Irk Inc must transfer the excess Fin paid over the nominal value of the shares to a general reserve – false

Irk Inc is not permitted to pay the excess Fin paid over the nominal value of the shares as a dividend – true

Irk Inc is permitted to use the excess Fin paid over the nominal value of the shares to fund a bonus issue – true

Irk Inc is permitted to repay the excess Fin paid over the nominal value of the shares back to him as a cash payment – false

A company may issue shares for a price in excess of the nominal value of those shares. The excess is called the 'share premium' and must be credited to a share premium account which is not a general reserve. The general rule is that reduction of the share premium account is subject to the same restrictions as reduction of share capital. No part of the account can be distributed as dividend or as a cash payment. The account can be used to pay up fully paid shares under a bonus issue since this operation simply converts one form of fixed capital into another. It can also be used to pay issue expenses and commissions in respect of a new share issue.

- 5 (a) Being specific or precise

Likely to have a significant effect on the price of securities

The Criminal Justice Act 1993 defines inside information as information:

- Relating to particular securities
- Being specific or precise
- Not made public
- Likely to have a significant effect on the price of securities

- (b) Kip – both offences

Lu – trading using inside information

Kip is an insider by virtue of his position as an accountant in Jaz Inc. The information he holds is price-sensitive because it concerns large profits. Therefore, it would appear that he is liable for dealing in price-affected securities. None of the defences would apply to him as he clearly expected to make a profit.

He also becomes liable for the offence of encouraging another to deal in price-affected securities when he advises Lu to buy shares in Jaz Inc.

Lu received inside information from Kip who he knew to be an insider. Therefore he is liable, like Kip, for trading using inside information.

ACCA Applied Skills

Corporate and Business Law (LW) (GLO)

Mock Exam 2

Questions	
Time allowed	2 hours
This exam is divided into two sections:	
Section A	ALL 45 questions are compulsory and MUST be attempted
Section B	ALL 5 questions are compulsory and MUST be attempted

Please note that it is not possible to predict question topics in an examination of this nature. We have based the content of this Mock Exam on our long experience of the ACCA exams. We do not claim to have any endorsement of the question types or topics from either the examining team or the ACCA and we do not guarantee that either the specific questions or the general areas that are featured here will necessarily be included in the exams, in part or in whole.

We do not accept any liability or responsibility to any person who takes, or does not take, any action based (either in whole or in part and either directly or indirectly) upon any statement or omission made in this book. We encourage students to study all topics in the ACCA syllabus and this Mock Exam is intended as an aid to revision only.

**DO NOT OPEN THIS EXAM UNTIL YOU ARE READY TO START UNDER
EXAMINATION CONDITIONS**

Section A – ALL 45 questions are compulsory and MUST be attempted

- 1 In a case that is being heard under the English criminal law system, which of the following is the party who is being tried?
- ☐ The accused
 - ☐ The claimant
 - ☐ The defendant
- (1 mark)**
-
- 2 What is a treasury share?
- ☐ A share issued on terms that it may be brought back by the company at a future date
 - ☐ A share offered to members to purchase pro rata to their existing holding
 - ☐ A share given fully paid to existing members
 - ☐ A share created when a company purchases its own shares for cash or out of distributable profit
- (2 marks)**
-
- 3 In the English legal system, which rule of statutory interpretation means that words in an Act should be given their grammatical meaning?
- ☐ The literal rule
 - ☐ The contextual rule
 - ☐ The mischief rule
- (1 mark)**
-
- 4 Which of the following barriers to free trade is a tax on an imported good?
- ☐ Import quotas
 - ☐ Import embargos
 - ☐ Tariffs
 - ☐ Government subsidies
- (2 marks)**
-
- 5 Hamble is the Chief Executive Officer of Bead Co. In a communication with one of Bead Co's suppliers, Hamble states that Avery is now an agent of Bead Co and that the supplier should in future communicate with Bead Co through Avery.
- Which type of agency agreement has been created?
- ☐ Agency by estoppel
 - ☐ Agency by necessity
 - ☐ Agency by implied agreement
- (1 mark)**
-
- 6 Which of the following is the highest court of appeal in the English legal system?
- ☐ Court of Appeal
 - ☐ European Court of Justice
 - ☐ Supreme Court
- (1 mark)**
-
- 7 Which of the following describes the liability of partners who retire from an unlimited partnership?
- ☐ Liable for partnership debts only up until the date of retirement
 - ☐ Liable for partnership debts incurred before and after retirement
 - ☐ Liable for partnership debts until all creditors of the firm have been notified of their retirement
- (1 mark)**
-

- 8 A liquidation committee is involved in which of the following insolvency procedures?
- ☐ Members' voluntary liquidation
 - ☐ Creditors' voluntary liquidation
 - ☐ Compulsory liquidation
 - ☐ Administration
- (2 marks)**
-
- 9 George is a director of two companies that operate in the same industry, Zip Co and Bung Co. Both Zip Co and Bung Co have recently tendered for the same contract with Jane Co. Only one company will be awarded the contract.
- Which statutory duty of a director is George in breach of?
- ☐ Acting within powers
 - ☐ Exercising independent judgement
 - ☐ Not accepting benefits from third parties
 - ☐ Avoiding conflicts of interest
- (2 marks)**
-
- 10 Under the UNCITRAL Model Law on International Commercial Arbitration, which of the following forms may arbitral proceedings take?
- ☐ Oral only
 - ☐ Written only
 - ☐ Oral or written
- (1 mark)**
-
- 11 Which of the following is a legitimate method for an auditor to leave office?
- ☐ Written resolution with a 75% majority
 - ☐ Ordinary resolution with 14 days' notice of the meeting
 - ☐ Resignation of the auditor before the end of their term of office
- (1 mark)**
-
- 12 Which of the following contracts does the UN Convention on Contracts for the International Sale of Goods apply to?
- ☐ Sales of commodities for personal use
 - ☐ Supply of labour
 - ☐ Sales of commercial raw materials
- (1 mark)**
-
- 13 Under the UN Convention on Contracts for the International Sale of Goods, where a seller delivers more goods than the buyer ordered, which of the following statements is correct?
- ☐ The buyer may take delivery of part of the excess and pay the contracted price for it
 - ☐ The buyer must take delivery of all of the excess and pay the contracted price for it
 - ☐ The buyer must return all of the excess to the seller
 - ☐ The buyer may take delivery of part of the excess and pay half the contracted price for it
- (2 marks)**
-
- 14 Under the UN Convention of Contracts for the International Sale of Goods, where a contract is avoided the injured party may wish to claim damages.
- If the goods in the contract have a current price, which price is used in the calculation of the damages?
- ☐ The current price in the seller's country
 - ☐ The current price in the buyer's country
 - ☐ The current price in the place of delivery
 - ☐ The current price in the seller's price list
- (2 marks)**
-

- 15 In a contract for the international sale of goods involving a letter of credit, which of the following parties issues the letter of credit?
- ☐ The buyer
 - ☐ The buyer's bank
 - ☐ The seller
 - ☐ The seller's bank
- (2 marks)**
-

- 16 Under which Incoterm does the seller pay for carriage of goods to a named location?
- ☐ CPT
 - ☐ DAP
 - ☐ CIP
- (1 mark)**
-

- 17 In the English criminal law system, the Queen's Bench Division is a part of which of the following courts?
- ☐ The Court of Appeal
 - ☐ The Supreme Court
 - ☐ The High Court
- (1 mark)**
-

- 18 In the English civil law system, the decision of which of the following courts may be appealed directly to the Supreme Court?
- ☐ Crown Court
 - ☐ County Court
 - ☐ Court of Appeal
- (1 mark)**
-

- 19 Gup has a contract under the UN Convention on Contracts for the International Sale of Goods to supply Jud with a computer on 31 March 20X1. On 2 March 20X1 Gup tells Jud that due to demand in the market for computer chips, the cost of supplying the computer has increased and that he will no longer be able to supply it.
- On 2 March 20X1, which of the following options is available to Jud?
- ☐ Jud may avoid the contract, but cannot sue for damages until after 31 March
 - ☐ Jud must allow the contract to continue until 31 March and then sue for damages
 - ☐ Jud may avoid the contract and sue for damages on 2 March
 - ☐ Jud must accept that Gup's performance is impossible and there is no legal remedy for him
- (2 marks)**
-

- 20 Which of the following statements regarding the transfer of international bills of exchange is correct?
- ☐ The payee needs the permission of the drawee to transfer an international bill of exchange
 - ☐ The payee needs the permission of the guarantor to transfer an international bill of exchange
 - ☐ The payee may transfer an international bill of exchange providing the drawer has not marked it with a restriction that prevents it
- (1 mark)**
-

- 21 Which of the following changes to a company's articles of association is valid?
- ☐ Compelling a member to subscribe for additional shares
 - ☐ Permitting the company to perform an illegal act
 - ☐ Reducing the majority needed in a resolution to change the company's name to 25%
 - ☐ Compelling a member to accept increased liability on the company's shares that they hold
- (2 marks)**
-

- 22 Which part of a nation's legal system is concerned with ensuring that the criminal law is enforced?
- ☐ The judiciary
 - ☐ The prosecution system
 - ☐ The legislature
 - ☐ The executive
- (2 marks)
-
- 23 According to the UN Convention on Contracts for the International Sale of Goods, when must a buyer examine the goods for conformity in a contract that involves carriage?
- ☐ As soon as possible after delivery
 - ☐ Within a reasonable time after delivery
 - ☐ Within 30 days of delivery
- (1 mark)
-
- 24 Luce sent an email to Brice that asked 'Will you sell your consignment of computers to me?'. Brice sent an email in reply that stated 'The price of the computers is \$2,000'.
- How will Brice's email to Luce be treated under the UN Convention on Contracts for the International Sale of Goods?
- ☐ As an offer
 - ☐ As an invitation to treat
 - ☐ As an acceptance
 - ☐ As a counter-offer
- (2 marks)
-
- 25 In relation to company meetings, what is a proxy?
- ☐ A person appointed by a shareholder to attend the meeting and vote on their behalf
 - ☐ A person who presides over the meeting
 - ☐ A person who counts the votes cast by members on a resolution
- (1 mark)
-
- 26 One ground for a creditor to apply for the compulsory liquidation of a company is that they are owed a minimum amount of money; they have issued a written demand for payment of what is owed and the company fails to repay the debt or offer reasonable security for it within 21 days.
- What is the minimum amount of debt owed by the company for this procedure to apply?
- ☐ £500
 - ☐ £750
 - ☐ £1,000
 - ☐ £1,500
- (2 marks)
-
- 27 Which of the following statements concerning an arbitral award made under the UNCITRAL Model Law on International Commercial Arbitration is **NOT** correct?
- ☐ Arbitral awards must be made orally
 - ☐ Arbitral awards must be signed by the arbitrators
 - ☐ Arbitral awards must state the reasons behind the award
 - ☐ Arbitral awards must state the date and place of arbitration
- (2 marks)
-
- 28 Which of the following statements concerning the form of a contract made under the UN Convention on Contracts for the International Sale of Goods is correct?
- ☐ Contracts should be in writing
 - ☐ Contracts should be evidenced in writing
 - ☐ Contracts do not have to be in writing or evidenced in writing
- (1 mark)
-

- 29 Which of the following will **NOT** cause a floating charge to crystallise?
- ☐ Liquidation of the company
 - ☐ Sale of the assets the charge is secured on
 - ☐ Cessation of the company's business
 - ☐ Appointment of a receiver by the chargee
- (2 marks)

- 30 Under the UN Convention on Contracts for the International Sale of Goods, which of the following statements regarding acceptance of an offer is correct?
- ☐ Acceptance may not be withdrawn once it is sent
 - ☐ Acceptance may only be withdrawn if it was made in error
 - ☐ Acceptance may be withdrawn at any time providing the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective
- (1 mark)

- 31 What is the name given to an arbitrator under Sharia law?
- ☐ Riba
 - ☐ Hakam
 - ☐ Takhim
 - ☐ Solh
- (2 marks)

- 32 In the context of Sharia law, what are judges known as?
- ☐ Imam
 - ☐ Madhab
 - ☐ Sunnah
 - ☐ Quran
- (2 marks)

- 33 A private limited company is distinguished from other corporate forms by what at the end of its name?
- ☐ plc
 - ☐ Ltd
 - ☐ LLP
- (1 mark)

- 34 In relation to the payment of dividends, which of the following is a distributable reserve?
- ☐ Capital redemption reserve
 - ☐ Revaluation reserve
 - ☐ Retained earnings
 - ☐ Share premium account
- (2 marks)

- 35 Which of the following will prevent a company from appointing an administrator?
- ☐ The company is currently unable to pay its debts
 - ☐ A resolution of the floating chargeholders with a 75% majority
 - ☐ A receiver currently in office at the company
 - ☐ A declaration of solvency from the directors
- (2 marks)

- 36 In relation to insider dealing, information that is 'made public' is not classed as inside information. Which **TWO** of the following is information that is 'made public'?
- ☐ Information that is published under the rules of the regulated market
 - ☐ Information concerning public companies
 - ☐ Information communicated by the company chairman
 - ☐ Information published in *The Gazette*
- (2 marks)

37 Which **TWO** of the following international bodies are **NOT** involved in the creation of international law?

- ☐ UNIDROIT
- ☐ UNCITRAL
- ☐ WTO
- ☐ ICC

(2 marks)

38 Which party is **NOT** liable on a pre-incorporation contract?

- ☐ The company
- ☐ The third party
- ☐ The promoter

(1 mark)

39 Which of the following would be a fundamental breach of contract by the seller in a contract under the UN Convention on Contracts for the International Sale of Goods?

- ☐ Lack of conformity of some of the goods with regard to their colour
- ☐ Late delivery to the buyer where time is of the essence
- ☐ Failure to deliver the correct quantity of the goods ordered

(1 mark)

40 Which **TWO** of the following parties are bound by a company's constitution?

- ☐ The company's shareholders
- ☐ The company's suppliers
- ☐ The company's debentureholders
- ☐ The company itself

(2 marks)

41 Which **TWO** of the following are valid defences available to a charge of bribery?

- ☐ The person did not expect to make a profit
- ☐ The person was exercising their function as a member of the intelligence service
- ☐ The person was exercising their function as a member of the armed forces on active service
- ☐ The person had reasonable grounds for their conduct

(2 marks)

42 Which international body is responsible for developing Incoterms used in contracts for the International Sale of Goods?

- ☐ WTO
- ☐ ICC
- ☐ OECD
- ☐ UNCITRAL

(2 marks)

43 Which of the following is an example of a bill of exchange?

- ☐ A cheque
- ☐ A letter of credit
- ☐ A payment order

(1 mark)

44 Under the UN Convention on Contracts for the International Sale of Goods, if a contract is formed without reference to price, which price will be implied into the contract?

- ☐ The price generally charged when the contract was formed
- ☐ The price generally charged when the goods were dispatched
- ☐ The price generally charged when the goods were delivered
- ☐ The price generally charged when payment is due

(2 marks)

45 Which **TWO** of the following Incoterms are relevant to any mode of transport?

- ☐ FCA
- ☐ DDP
- ☐ FAS
- ☐ CIF

(2 marks)

(Total = 70 marks)

Section B – ALL 5 questions are compulsory and MUST be attempted

- 1 Art is an international trader in rare Persian rugs. In June 20X2 he received a delivery of an exceptional rug and wrote to his three most frequent international clients, Bon, Con and Dan, saying that he was offering to sell the rug for \$100,000.

Bon responded by email two days later saying that he accepted the offer of the rug but was only willing to pay \$75,000.

Con replied immediately, by text message, stating that he accepted Art's offer but that he would not be able to pay the full amount before September.

Dan replied a day after by post, saying that he would pay the offered price, but only if Art could supply an additional four rugs of equal quality.

Before receiving any of these replies, Art actually sold the rug to Ek, a local client, for \$105,000.

- (a) Which of the following statements correctly describes to position between Bon and Art?
- ☐ Bon has a valid contract with Art which was breached when the rug was sold to Ek
 - ☐ Bon does not have a valid contract with Art because he rejected Art's offer by a counter-offer
 - ☐ Bon does not have a valid contract with Art because he did not accept the offer within a reasonable time
 - ☐ Bon does not have a valid contract with Art because he should have accepted orally **(2 marks)**
- (b) Which of the following statements correctly describes to position between Con and Art?
- ☐ Con has a valid contract with Art which was breached when the rug was sold to Ek
 - ☐ Con does not have a valid contract with Art because he rejected Art's offer by a counter-offer
 - ☐ Con does not have a valid contract with Art because he did not accept the offer within a reasonable time
 - ☐ Con does not have a valid contract with Art because he should have accepted orally **(2 marks)**
- (c) Which of the following statements correctly describes to position between Dan and Art?
- ☐ Dan has a valid contract with Art which was breached when the rug was sold to Ek
 - ☐ Dan does not have a valid contract with Art because he rejected Art's offer by a counter-offer
 - ☐ Dan does not have a valid contract with Art because he did not accept the offer within a reasonable time
 - ☐ Dan does not have a valid contract with Art because he should have accepted orally **(2 marks)**
- (Total = 6 marks)**

- 2 Aldo, a manufacturer from Murland, entered into a contract with Ben, a wholesaler from Curland, to supply him with two machines. A week after they were delivered Ben found that both of them were missing a part that, although not essential, was included in the original specification. Nonetheless Ben sold one of them before writing to inform Aldo that, due to the missing part, he was not willing to pay the agreed price for the machines.

The agreed price for each machine was \$3,000.

Ben informed Aldo that he was only willing to pay \$2,500 for each.

Aldo responded by saying that he was willing to supply and fit the missing part.

Required

- (a) Which of the following statements concerning Aldo is correct?
- ☐ Aldo has committed a fundamental breach of contract
 - ☐ Aldo has breached the contract but it is not a fundamental breach
 - ☐ Aldo only breached the contract in respect of one of the machines
 - ☐ Aldo has not breached the contract
- (2 marks)**
- (b) Which of the following statements concerning examining the goods and notifying lack of conformity is correct?
- ☐ Ben met his legal obligations in respect of examining the machines and of notifying Aldo of the lack of conformity
 - ☐ Ben did not meet his legal obligations in respect of examining the machines, but he did meet his obligations of notifying Aldo of the lack of conformity
 - ☐ Ben met his legal obligations in respect of examining the machines, but did not meet his obligations of notifying Aldo of the lack of conformity
 - ☐ Ben did not meet his legal obligations in respect of examining the machines or of notifying Aldo of the lack of conformity
- (2 marks)**
- (c) Which of the following statements concerning remedies for Ben in respect of the machine he resold is correct?
- ☐ Ben does not have any remedy in respect to lack of conformity of the resold machine
 - ☐ Ben may reduce the amount he pays Aldo for the resold machine in relation to the lack of conformity
 - ☐ Ben may require Aldo to repair the resold machine
 - ☐ Ben may require Aldo to supply a replacement for the resold machine
- (2 marks)**
(Total = 6 marks)

-
- 3 Mat is in the process of setting up an IT business as a private limited company. He has been told that in order to register the company he should submit appropriate articles of association and a memorandum of association.

He also thinks that because there is an existing similar, local business called Netscape Co it would be a good idea to call his new company Netscope Co based on the chance that he could transfer some of its business to his new company.

- (a) Which of the following is contained within a company's memorandum of association?
- ☐ Details of class rights
 - ☐ Names of the subscribers to the company
 - ☐ Rules governing the conduct of meetings
 - ☐ Powers of directors
- (2 marks)**
- (b) Which of the following statements concerning Mat's company's articles of associate is correct?
- ☐ Mat's company will not be registered until he submits articles of association
 - ☐ Mat's company may trade while he finalises its articles of association
 - ☐ If Mat does not submit articles of association then the Registrar will incorporate the company with model articles for a 'Limited Company'
 - ☐ If Mat does not submit articles of association then the Registrar will incorporate the company with model articles for a 'Private Limited Company'
- (2 marks)**

- (c) What advice would you give to Mat in regards to his proposed company's name?
- ☐ He should use the name because it is not the same as the existing company
 - ☐ He should use the name because there are no laws against using a similar name to another company
 - ☐ He should not use the name because he would be prevented to do so by the common law
 - ☐ He should not use the name because it is unethical to do so
- (2 marks)**
(Total = 6 marks)
-

4 Five years ago Kim, Liz and Meg formed Orb Co in which Kim and Liz each hold 40% of the shares and Meg owns the remaining 20%. They are the only directors. The objects of Orb Co contained in its articles are restricted to research, production and marketing environmentally-friendly cleaning products.

In the course of a research project for Orb Co, Kim discovered a new highly powerful industrial cleaner, but unfortunately it is extremely toxic and not at all environmentally-friendly. She persuaded Liz that Orb Co should sell the new product and the pair recently signed a contract with Zeeb Co to distribute it. The pair have started to market the product to other potential customers as well.

Meg maintains that the contract is contrary to the restrictions stated in Orb Co's articles and is not binding on the company.

- (a) Which of the following statements describe the legal capacity of a registered company to contract?
- ☐ A registered company may enter into any lawful contract and cannot be restricted by the members
 - ☐ A registered company may enter into any lawful or unlawful contract
 - ☐ A registered company may enter into any lawful contract subject to any restrictions placed on it by the members
 - ☐ A registered company may enter into any lawful contract subject to approval of the members
- (2 marks)**
- (b) Can Zeeb Co enforce its contract with Orb Co?
- ☐ No – the contract is ultra vires for the company
 - ☐ No – Kim and Liz did not have authority to enter the company into the contract
 - ☐ Yes – the principle of ultra vires does not apply to companies
 - ☐ Yes – the principle of ultra vires applies but the Companies Act 2006 protects third parties to ultra vires contracts
- (2 marks)**
- (c) Can Meg may stop Kim and Liz marketing the new product to other potential customers?
- ☐ Yes – because shareholders owning over 15% of the shares may apply to the court to prevent the company carrying out ultra vires activities
 - ☐ Yes – because Kim and Liz have acted in breach of their statutory duties as directors
 - ☐ No – because Kim and Liz own sufficient voting rights to control the company
 - ☐ No – because it is a matter for the Registrar of Companies to decide on
- (2 marks)**
(Total = 6 marks)
-

- 5 Martha is the finance director of a publicly listed chain of fashion stores. The company is finding it increasingly hard to pay its creditors as its sales are falling rapidly and the point has been reached where Martha must decide whether to close the failing business down or to battle on, even though the business is unlikely to pull through.

Em jointly owns a rival store. It is experiencing some minor cash flow problems and she is thinking about starting a members' voluntary winding up to close the company down.

- (a) Which of the following is a criminal offence that Em may commit if a members' voluntary winding up is commenced?

- ☐ Making a false declaration of solvency
- ☐ Insider dealing
- ☐ Money laundering
- ☐ Bribery

(2 marks)

- (b) Identify whether Martha and Em have any liability for fraudulent or wrongful trading under the Insolvency Act 1986.

	Fraudulent trading only	Wrongful trading only	Both offences	Neither offence
Martha	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Em	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

(4 marks)

(Total = 6 marks)

(Total = 30 marks)

Answers

**DO NOT TURN THIS PAGE UNTIL YOU HAVE
COMPLETED THE MOCK EXAM**

SECTION A

1 The accused

In the English criminal law system the prosecution is the party bringing a case against the accused.

Syllabus area A1(c)

2 A share created when a company purchases its own shares for cash or out of distributable profit

A treasury share is created when a company buys its own shares for cash or out of distributable profit. A redeemable share is issued on the basis that the company can buy it back at a future date. A rights issue is where shares are offered to members to buy pro rata to their existing holding. A bonus issue is where shares are given fully paid to the existing members.

Syllabus area E1(b)

3 The literal rule

The literal rule states that words should be given their grammatical meaning. The contextual rule states that a word should be construed in its context. The mischief rule states that the judge should consider what mischief the Act was intended to prevent.

Syllabus area A1(di)

4 Tariffs

A tariff is a tax on an imported good. A quota is a restriction placed on the volume of imports of a particular good. An embargo is a total ban on an import. A government subsidy is a form of support given by a government to local producers.

Syllabus area A2(a)

5 Agency by estoppel

Hamble is 'holding out' to the supplier that Avery is an agent of Bead Ltd. Therefore an agency by estoppel has been created.

Syllabus area D1(b)

6 European Court of Justice

Due to its membership of the European Union, the highest appeal court in the English legal system is the European Court of Justice.

Syllabus area A1(di)

7 Liable for partnership debts until all creditors of the firm have been notified of their retirement

Retiring partners are liable for partnership debts, incurred before and after the retirement until all creditors are notified of their retirement.

Syllabus area D2(d)

8 Creditors' voluntary liquidation

A liquidation committee is involved in a creditors' voluntary liquidation.

Syllabus area G1(a)

9 Avoiding conflicts of interest

George has a conflict of interest because both companies want to win the contract, but only one will be successful. The interests of both companies are in conflict.

Syllabus area F1(d)

- 10 Oral or written
Under the Model Law, arbitral tribunals may proceed orally or in writing.
Syllabus area A3(c)
- 11 Resignation of the auditor before the end of their term of office
An auditor may resign from office during their term by giving the company notice in writing. They cannot be removed by a written resolution, but can be removed with an ordinary resolution with special (28-day) notice of the meeting.
Syllabus area F2(b)
- 12 Sales of commercial raw materials
The UN Convention applies only to commercial sales, not personal sales, and not to contracts for the supply of labour.
Syllabus area B1(a)
- 13 The buyer may take delivery of part of the excess and pay the contracted price for it.
Where a seller delivers a greater amount than the buyer ordered, the buyer may accept all or some of the excess as long as they pay the contracted price for the amount taken.
Syllabus area B2(ai)
- 14 The current price in the place of delivery
The current price is the price prevailing at the place delivery should have been made. Note that this may be different to the buyer's country because a buyer in one country may require the goods to be delivered to a location in a different state.
Syllabus area B2(cii)
- 15 The buyer's bank
A letter of credit is a method of payment for goods sold under international contracts. The buyer instructs their bank to issue a letter of credit in favour of the seller.
Syllabus area C1(e)
- 16 CPT
CPT means carriage paid to. The seller pays for carriage to a named location.
Syllabus area B1(c)
- 17 The High Court
The Queen's Bench Division is a divisional court of the High Court.
Syllabus area A3(a)
- 18 Court of Appeal
In the English civil law system, appeals to the Supreme Court are usually made from the Court of Appeal, or from the High Court (not listed as an option) via the leapfrog procedure.
Syllabus area A3(a)
- 19 Jud may avoid the contract and sue for damages on 2 March
Gup's performance is not impossible, just more expensive, and therefore he has committed anticipatory breach of contract and the breach is fundamental to the contract. In this situation, Jud is entitled to avoid the contract and sue for damages immediately.
Syllabus area B3(ci)

- 20 The payee may transfer an international bill of exchange providing the drawer has not marked it with a restriction that prevents it
A payee may freely transfer an international bill of exchange providing the drawer has not marked it with 'not negotiable', 'not transferable' or something similar.
Syllabus area C1(d)
- 21 Reducing the majority needed in a resolution to change the company's name to 25%
A change to a company's articles is permitted providing it does not conflict with the Companies Act 2006 or general law. A company may set its own procedure for changing its name but may not perform an illegal act. Changes that compel a member to subscribe for additional shares or increase their liability on the shares they own are not permitted.
Syllabus area D4(g)
- 22 The prosecution system
It is the prosecution system that ensures that the criminal law is enforced. The executive makes decisions to put laws into action. The legislature decides on what laws should be passed. The judiciary rules on disputes about laws.
Syllabus area A1(b)
- 23 As soon as possible after delivery
Under the UNCISG, a buyer has a duty to examine the goods as soon as possible after delivery.
Syllabus area B2(a ii)
- 24 As an invitation to treat
Under the UN Convention, for a statement to be an offer it must be sufficiently definite in terms of the goods, price and quantity. This means Luce's original email is an invitation to treat because it is not sufficiently definite. Because Luce's original email is an invitation to treat, Brice's reply cannot be acceptance or a counter-offer. Brice's reply is also not sufficiently definite and therefore it too is an invitation to treat.
Syllabus area B1(b)
- 25 A person appointed by a shareholder to attend the meeting and vote on their behalf
A proxy is a person appointed by a shareholder to attend the meeting and vote on their behalf. It is the chairman that presides over the meeting.
Syllabus area F3(c)
- 26 £750
The creditor must be owed at least £750 for the procedure to apply.
Syllabus area G1(b)
- 27 Arbitral awards must be made orally
Arbitral awards must be in writing, not oral. The other options are correct statements about arbitral awards.
Syllabus area A3(e)
- 28 Contracts do not have to be in writing or evidenced in writing
There are no requirements as to the form of contracts made under the UN Convention. They do not have to be in writing or evidenced in writing.
Syllabus area B1(a)
- 29 Sale of the assets the charge is secured on
Sale of the assets that the charge is secured on does not cause the charge to crystallise. The other options all cause the charge to crystallise.
Syllabus area E2(d)

- 30 Acceptance may be withdrawn at any time providing the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective
Under the UN Convention, acceptance may be withdrawn providing the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective.
Syllabus area B1(b)
- 31 Hakam
Under Sharia law an arbitrator is known as Hakam. Takhim is arbitration, Solh is conciliation and Riba is the concept of unlawful gain.
Syllabus area A3(a)
- 32 Imam
In Sharia law, judges are clerics known as Imam. The other options are sources of Sharia law.
Syllabus area A1(diii)
- 33 Ltd
A private limited company is identified by Ltd at the end of its name. A public limited company has plc and a limited liability partnership has LLP.
Syllabus area D3(a)
- 34 Retained earnings
Distributable reserves include reserves of realised profits less realised losses, for example retained earnings. The other options are all non-distributable reserves.
Syllabus area E3(b)
- 35 A receiver currently in office at the company
A company may not appoint an administrator if a receiver is already in office. Being unable to pay its debts is a ground for appointing an administrator.
Syllabus area G1(e)
- 36 Information that is published under the rules of the regulated market
Information published in *The Gazette*
The key word in the two correct answers is 'published'. Information published under rules of the regulated market and contained in public records, such as *The Gazette*, is public information. The other options have not been made public and could have been disclosed privately.
Syllabus area H1(a)
- 37 WTO
ICC
The UN Commission on International Trade Law (UNCITRAL) and the International Institute for the Unification of Private Law (UNIDROIT) are both involved in the creation of international law. The World Trade Organization (WTO) and International Chamber of Commerce (ICC) do not create law.
Syllabus area A2(c)
- 38 The company
The company is not liable on a pre-incorporation contract because it did not exist when the contract was formed. The parties to the contract are the promoter and the third party.
Syllabus area D4(b)

- 39 Late delivery to the buyer where time is of the essence
If time is of the essence to the buyer (such as where the goods are needed on a particular day to meet a production schedule) and the seller does not deliver on time then this is serious enough to be classified as a fundamental breach of contract. Failure to meet conformity or partial delivery are not so serious and therefore the breach is not fundamental.
Syllabus area B2(ci)
- 40 The company's shareholders
The company itself
A company's constitution only binds the company and its members (the shareholders).
Syllabus area D4(e)
- 41 The person was exercising their function as a member of the intelligence service.
The person was exercising their function as a member of the armed forces on active service.
Only members of the armed forces or intelligence service that are properly exercising their function have a defence to bribery charges.
Syllabus area H1(d)
- 42 ICC
Incoterms are developed by the International Chamber of Commerce (ICC).
Syllabus area A2(c)
- 43 A cheque
A cheque is an example of a bill of exchange. A letter of credit is another form of international payment. A payment order is used in an international credit transfer.
Syllabus area C1(d)
- 44 The price generally charged when the contract was formed
Under the UN Convention, where a contract is formed without reference to price, the price generally charged when the contract was formed will be implied into the contract.
Syllabus area B2(bi)
- 45 FCA
DDP
FCA and DDP are relevant to any mode of transport. FAS and CIF are only relevant to maritime transport.
Syllabus area B1(c)

SECTION B

- 1 (a) Bon does not have a valid contract with Art because he rejected Art's offer by a counter-offer. Bon's reply to Art includes a significant modification of Art's offer because it reduces the price from \$100,000 to \$75,000. He therefore made a counter-offer to Art and therefore no contract exists between the parties. Bon has no right of action against Art.
- (b) Con does not have a valid contract with Art because he rejected Art's offer by a counter-offer. Con's reply to Art states that he accepts the offer but cannot pay until September. Art's offer does not state when payment should be made, but it is assumed that Art expects payment as soon as possible. In this case, Con is seeking a significant modification of the terms of the offer and is therefore making a counter-offer. This means that no contract exists between the parties and Con has no action against Art.
- (c) Dan does not have a valid contract with Art because he rejected Art's offer by a counter-offer. Dan also makes a counter-offer to Art because he asks for four additional rugs in his 'acceptance'. This means no contract exists between the parties and Dan has no action against Art.
- 2 (a) Aldo has breached the contract but it is not a fundamental breach. Aldo has breached the contract with Ben by not delivering machines that conform to the contract specifications. However, the lack of conformity was only minor, so this was not a fundamental breach of contract.
- (b) Ben did not meet his legal obligations in respect of examining the machines or of notifying Aldo of the lack of conformity. Ben was under a duty to examine the goods and inform Aldo of any lack of conformity within a reasonable time. Ben failed to do either and therefore breach his obligation.
- (c) Ben does not have any remedy in respect to lack of conformity of the resold machine. *UN Case 56* suggests that if a buyer resells goods without notifying the original seller of the lack of conformity, then they have not given reasonable notice and they lose the right to rely on the lack of conformity of those goods. Therefore, with regard to the resold machine, Ben loses that right and must pay the full contract price. Aldo is not required to repair or replace the machine.
- 3 (a) Names of the subscribers to the company. A company's articles of association is part of its constitution that deals with matters affecting the internal conduct of the company's affairs including the issue and transfer of shares and class rights, dividends and alterations of capital structure, the convening and conduct of general meetings, the appointment, powers and proceedings of directors and company accounts. The memorandum is a document that is signed and dated by the subscribers of the company. It states that the subscribers wish to form a company and that they undertake to subscribe for at least one share.
- (b) If Mat does not submit articles of association then the Registrar will incorporate the company with model articles for a 'Private Limited Company'. If articles of association are not submitted when a company is registered then the Registrar will form the company with model articles for the type of company being formed, in this case a private limited company. There are no model articles for a 'limited company' as this term includes public limited companies as well as private limited companies. A company without articles cannot be formed and therefore trade.
- (c) He should not use the name because he would be prevented to do so by the common law. At common law, a company can be prevented from using a name if the use of that name causes the company's goods to be confused with those of another company. The court may grant an injunction in a passing off action brought by that other company and may also force the defendant company to change its name.

Mat is likely to be liable for an action in passing-off, particularly because of the similarity in business types and their location near each other. The case against him is strengthened because he declared that his aim is to benefit from the goodwill of an existing company. He is advised not to call his new company Netscope Co.

- 4 (a) A registered company may enter into any lawful contract subject to any restrictions placed on it by the members. The contractual capacity of a registered company is usually unrestricted and it may enter into any lawful contract. However the members may resolve to restrict the activities of the company (the objects), or the articles may have included restrictions at the time the company was registered.
- (b) Yes – the principle of ultra vires applies but the Companies Act 2006 protects third parties to ultra vires contracts. Any contract entered into that is affected by such restrictions is known as ultra vires, and in theory it is void. However, given that the validity of a company's acts cannot be questioned on the grounds of it having lacked legal capacity (under s 39 of the Companies Act 2006), the ultra vires rule is of very limited effect insofar as third parties are concerned. Therefore Zeeb Co may enforce its contract with Orb Co.
- (c) No – because Kim and Liz own sufficient voting rights to control the company. Meg's colleagues own 80% of the company's shares and therefore can pass any resolution they wish to. They may well seek to unrestrict the company's objects by special resolution to make marketing the product fall within the scope of the company's objects. Kim and Liz may have breached their duties as directors, but this does not mean Meg can prevent the marketing of the product. The court and Registrar will not get involved in this matter.
- 5 (a) Making a false declaration of solvency. When companies go into a members' voluntary winding up, the directors must make a declaration of solvency – ie a declaration that the company is not insolvent. It is a criminal offence to make such a declaration without having reasonable grounds to do so. Therefore Em must be certain that the business is solvent before commencing the members' voluntary winding up or she risks committing this offence.
- (b) Martha – wrongful trading only

Em – neither offence

Fraudulent trading occurs when a company intended to defraud its creditors. If it is proved in respect of a company that has gone into liquidation, the persons who decide to carry on trading may become liable for the company's debts.

On the evidence provided, it is unlikely that Martha or Em will be found guilty of this offence, as it does not appear that they intend to defraud the creditors of their company.

The offence of wrongful trading was introduced because it is often difficult to prove intention in fraudulent trading cases. Under this offence, the directors of a company become liable for its debts if they continue to trade even if they knew or should have known that there was no reasonable prospect of the company avoiding going into liquidation. The test is whether or not a reasonably diligent person with the general knowledge, skill and experience that might be reasonably expected of a person carrying out the particular director's duties would have continued to trade.

From the evidence, it appears that Martha's company is unlikely to pull through, therefore Martha risks committing wrongful trading if she decides to continue to trade. Em's company is experiencing only minor cash flow problems, so at this stage there is not enough evidence to prove wrongful trading.

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